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Free Minds and Free Markets

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Superman vs. the Cops
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The War on Sex Trafficking Is the New War on Drugs

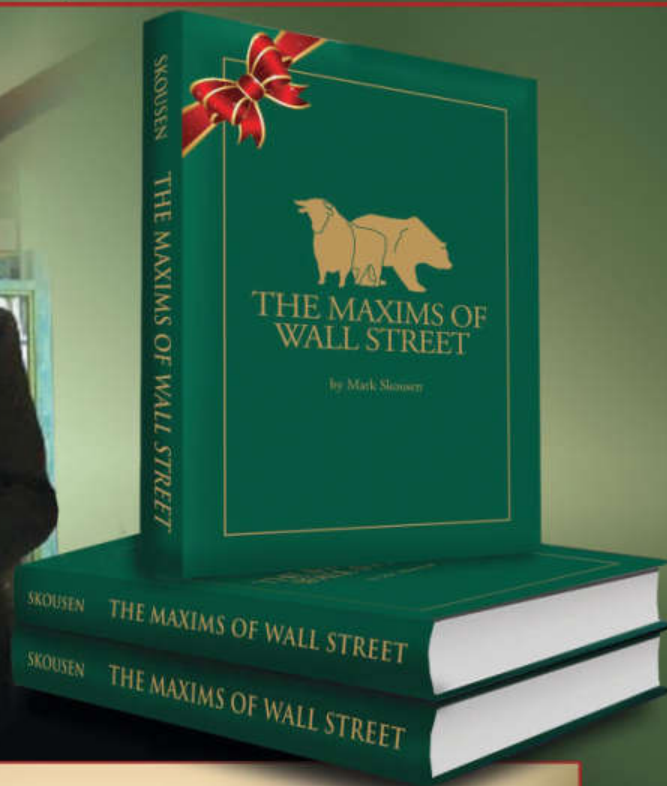
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Cover Photo: Veremejev/iStock/Getty Images



The GOP's Nativist Summer

How the Republican Party lost its marbles over immigration

WHEN DONALD TRUMP first theatrically escalated down the Trump Tower foyer and into our political lives on June 16, few commentators were predicting that the billionaire reality TV star would spend his summer dominating the Republican 2016 field, let alone driving a sustained debate over one of America's most intractable policy challenges.

No, they were too busy laughing. *The Washington Post's* Philip Bump headlined his reaction, "Donald Trump's spectacular, unending, utterly baffling, often-wrong campaign launch." *National Review's* Kevin D. Williamson was even more withering: "Witless Ape Rides Escalator."

Attracting special scorn was the real estate developer's incoherent 123-word rant about Mexicans: "When do we beat Mexico at the border? They're laughing at us, at our stupidity. And now they are beating us economically. They are not our friend, believe me. But they're killing us economically. The U.S. has become a dumping ground for everybody else's problems....When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people. But I speak to border guards and they tell us what we're getting. And it only makes common sense. It only makes common sense. They're sending us not the right people."

It was almost too gross to fact check. No, Mexico is not "beating," let alone "killing," the U.S. economically—the comparative per-capita GDP ratio is still 5-to-1 in favor of the yankees. (Also, international economics is not a zero-sum competition.) Immigrants from Mexico are not dis-

proportionately more criminal than the native population—in fact, native-born American men between 18 and 39 are twice as likely as immigrants from that cohort to be incarcerated, a ratio that has been stable for decades. Additionally, Mexico isn't "sending" its citizens northward in any organized sense, though that didn't stop Trump from claiming in the ensuing weeks that the Mexican government is engaged in a Mariel-boatlift-style prisoner-exporting operation to the U.S., only "more sophisticated" than Fidel Castro's. Even his relevant policy proposals—taxing auto parts made in Mexico, forcing the government there to pay for a 2,000-mile border wall—would involve, respectively, violating a longstanding free-trade agreement and suspending reality as we know it.

But a funny thing happened in the ensuing brouhaha: The nativist, protectionist fabulist took off like a rocket. In eight national polls prior to his announcement speech, Trump never registered more than 5 percent support from likely Republican voters. In the first poll after it (June 21–23, Fox News), he was at 11 percent and shooting northward. By July 9–12 (Monmouth) he led the field, a position he has maintained, usually with double-digit margins, until press time. Regardless of when his bubble comes back down to earth, Republican and American politics might not ever be the same.

It didn't matter to Trump's new and rabid fan base that he was a total political novice aiming to replace a president long criticized on the right for being dangerously inexperienced, or that the casino owner was a member of and donor to the Democratic Party for most of the 21st century to date. It was not a dealbreaker that as recently as November 2012 Trump was slamming GOP presidential loser Mitt Romney

for his “mean-spirited,” “crazy,” and “maniacal” policy of encouraging illegal immigrants to self-deport. No, what mattered was that finally someone was willing to stand up and condemn illegal immigration *now*.

On August 16, Trump unveiled his campaign’s first detailed policy document, an immigration “white paper” advocating mass deportation and a “pause” in the issuance of new legal green cards. Both have long been on the restrictionist wish list, but they are only now getting onto the radar screen of popular presidential candidates: Spend whatever it takes (estimates run north of \$100 billion) to expel the offending population, while making the already interminable waiting lines for *legal* immigration even longer. When you treat illegal immigration as a criminality problem, like Trump and now the mainstream GOP do, instead of

as a government-bungled mismatch between legal supply and private-sector demand (as the Republican Party of Ronald Reagan and George H.W. Bush did), you start believing in the fantasy that human behavior can be molded if only you wield enough authority.

The Republican frontrunner is also promising a trade war. Here are some of the penalties Mexico faces should that country refuse to pay for President Trump’s shiny new border wall: “impound all remittance payments derived from illegal wages; increase fees on all temporary visas issued to Mexican CEOs and diplomats (and if necessary cancel them); increase fees on all border crossing cards”; “increase fees on all NAFTA worker visas from Mexico”; and “increase fees at ports of entry to the United States from Mexico (Tariffs and foreign aid cuts are also

options).” It’s been a long time since a leading GOP candidate sought to tariff our way back to prosperity, yet that’s where we are in 2015.

And still Trump wasn’t done—not just with his illiberal proposals, but in influencing his competitors to follow suit. His white paper called for forcing every employer in the country to run every prospective employee through a single federal database to verify their legal status. Amazingly, this massive bureaucratization of and intrusion into the private transactions of U.S. citizens has become a mainstream Republican goal, among restrictionists and comprehensive-reformers alike, with the latter ranks including former Florida Gov. Jeb Bush and Florida Sen. Marco Rubio.

Still more amazingly, Trump’s proposal to “end birthright citizenship”—which at this point would

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require changing the 14th Amendment of the Constitution, whose plain governing language reads, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside”—has also become mainstream. Its adherents in the current Republican race include retired neurosurgeon Ben Carson, Texas Sen. Ted Cruz, Louisiana Gov. Bobby Jindal, Kentucky Sen. Rand Paul, former Pennsylvania Sen. Rick Santorum, and Wisconsin Gov. Scott Walker, for starters.

Trump then trumped his own restrictionist plans by saying on *Meet the Press* on August 16 that he also wants to deport the U.S. citizen children of illegal immigrants, too. Not since FDR shoved U.S. citizens of Japanese descent into rail cars and shipped them off to desolate desert

camps has such an appalling proposal had this much juice.

Faced with this popular uprising of anti-immigrant sentiment within their own party, Trump’s competitors have been going all in. Ben Carson, a political novice who was No. 2 in national polls at press time, said in Arizona on August 19 that “we need to seal our borders—but not just the southern border, the northern border, the Pacific border, the Atlantic border, every border.” On August 30, Scott Walker seemed to suggest that a border wall with *Canada* “is a legitimate issue for us to look at.” (Like a lot of Walker’s comments during his desultory campaign, he later walked it back.) Bobby Jindal has been warning whoever would listen (admittedly, not a large cohort) that “immigration without assimilation is an invasion,” as if the United States hasn’t had the

world’s most enviable assimilation machine for decades. And New Jersey Gov. Chris Christie on August 29 suggested that we treat immigrants like FedEx treats packages: with electronic tracking systems. “Then we go get you and tap you on the shoulder and say, ‘Excuse me, thanks for coming—time to go,’” Christie helpfully explained.

The presence of 11 million illegal immigrants in this country represents a policy failure, and an offense to the rule of law. Rather than examining whether the underlying rules governing legal visas have some culpability, Republicans have mostly opted for pretending lawbreakers can be punished out of existence. To get there, they are proposing something truly odious for us all: a police state. ■

Matt Welch (matt.welch@reason.com) is editor in chief of reason.



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“Junk Science and Campus Rape” (page 32) tracks **reason** Staff Editor ROBBY SOAVE’s investigation into the man who made conventional wisdom out of the idea that most sexual assaults against college students are committed by dangerous repeat offenders. Soave, 27, began focusing on higher education issues while writing for his university’s newspaper, *The Michigan Daily*. “This niche has only grown more fascinating over time, as so many college campuses ramp up their efforts to curtail free speech and due process,” he says. “It’s really fulfilling work—students (and their families) are very grateful that someone is telling their stories.”

A Ph.D. student in history at Berkeley and a fellow at the Independent Institute, ANTHONY GREGORY specializes in American legal institutions and theory. “I’ve always been fascinated by the Constitution and legal protections of civil liberties, at least since I was a young boy and my Dad taught me about the Bill of Rights,” he says. “Then the war on terror came and I found some of these issues as urgently important.” On page 65, Gregory, 34, reviews Susan Southard’s *Nagasaki: Life After Nuclear War*, which he describes as a powerful personal glimpse into the lives of five people who survived the atomic bombing that ended World War II.

Senior Editor PETER SUDERMAN is a superhero superfan. “Superman and the Justice League and the rest of the DC hero bench were my early favorites,” he says. “I had all the action figures (still do, somewhere) and for one of my elementary school birthdays, my mom made superhero costumes based on the characters from the show so that we could all dress up as our favorite heroes.” Though he says today he pays more attention to independent stories that aren’t part of the two big comic book universes, he happily reviews the Man of Steel’s latest adventure on page 72 (“Superman vs. the Cops”). Suderman, 33, is the winner of a Southern California Journalism Award and a Virginia Press Association Award for criticism.

DHS lawsuit; Uber targeted; Obama's commutations; the new sex ed; the sun hasn't set on capitalism; school choice upheld; Dodd-Frank and death in the Congo

The death of Sandra Bland **Three Days in Jail**

Ed Krayewski

BLACK LIVES Matter activist Sandra Bland was found dead in her jail cell in Waller County, Texas, in July, three days after being arrested during a traffic stop over her alleged failure to signal a lane change. The Texas Department of Public Safety (DPS) officer who pulled her over, Brian Encinia, accused Bland of resisting arrest. Dashcam video of the incident showed Encinia arresting her after she refused to put out a cigarette.

Authorities say Bland committed suicide, hanging herself using a garbage bag and privacy partition. Her family is skeptical of that, saying she had just traveled from her home in Illinois to Prairie View, Texas, to start a new job at a college there. Her death garnered national and international attention, with the DPS eventually placing Encinia **on administrative duty** for violating procedures and the department's "courtesy policy" but not saying what it was he did that was in violation.

In August, Bland's mother

filed a federal lawsuit against Encinia, two jail employees, Waller County, and the DPS. She is claiming Encinia violated Bland's constitutional rights by arresting her without cause and that the jail failed to adequately monitor her. **■**

Chow hall changes **Navy on a Diet**

Elizabeth Nolan Brown

SCHOOL CAFETERIAS aren't the only ones Uncle Sam is intent on making over. Last May, the U.S. Navy announced a number of menu changes designed to make its meals more nutritious. Chow

halls now feature skim and soy milk rather than whole milk, more prominently displayed produce, and a ban on deep-fried foods—only *baked* chicken and french fries are allowed.

The changes are part of a larger plan "to boost sailors' nutrition to new levels," the *Navy Times* reported in July. Navy members can also expect to see calorie counts posted in cafeterias and to receive training on healthy eating habits. Further menu revisions are planned. Whereas once the military mostly cared about doing things as cheaply as possible, now there's more focus on nutritional content, said Jeffrey Walker, a food service officer at the Fort Story base in Virginia. He thinks that "if the food is prepared right, sailors will accept the change over time."

The cafeteria tweaks come at the same time the Navy is *increasing* its body-fat limit for sailors but also implementing a new policy where two body-fat assessment failures in a three-year period means you're out. Vice Admiral Bill Moran, chief of naval personnel, told the *Times* that the Navy's fitness program is in a "transition" phase. **■**



Captain (ImageZoo Illustration/Veer)
Berlin (Photokoro/Thinkstock)



25 years ago in reason

"The demand on cabs has more than doubled the market value of a medallion in the last 10 years. [Taxi driver Robert] Lynch says he...tried to purchase a medallion from a broker but was unable to meet the price, now \$100,000 or more. Those prices have kept a lot of drivers like Lynch out of the market, which has increasingly come under the control of large fleet operators."

— Prabhat Mehta, "To Catch a Cab"

"Now that the Berlin Wall has fallen and communism has retreated, there seem to be very few dragons left for the United States to slay. True, Saddam 'Beast of Baghdad' Hussein has some potential as a villain. But many commentators have decided that, with the Soviets down for the count, the chief threats to America will be economic, not military."

—Martin Morse Wooster, "Protection Racket"


—November 1990

Waiting for Answers

Scott Shackford

LAURA POITRAS may not be as famous as Edward Snowden, but the documentarian is one of the reasons Americans even know who the whistleblower is. Snowden worked with her and journalist Glenn Greenwald to expose the federal government's surveillance on its own citizens. Poitras won an Academy award for *Citizenfour*, her movie about Snowden's leak.

The filmmaker has had her own miserable experiences with the post-9/11 security state. For six years, from 2006 to 2012, Poitras found herself on a Department of Homeland Security watchlist, being detained and interrogated by officials whenever she attempted to fly. She's not entirely certain why she was singled out, but even before *Citizenfour* she made films about the war on terror, about life under occupation in Iraq, and about men who worked with Osama bin Laden.

Because of the federal government's secretive policies, Poitras received no formal explanation for why she was frequently being pulled aside for questioning. The treatment eventually ended in 2012, after Greenwald wrote about her situation at *Salon*. She attempted to learn more by filing Freedom of Information Act queries with several federal agencies, but she has gotten almost no information from them. A couple of agencies didn't even respond. So with the assistance of the Electronic Frontier Foundation, Poitras filed a lawsuit in July demanding answers. 

Anti-discrimination laws

Interpretive Dance

Scott Shackford


GAY, LESBIAN, and transgender activists have been trying for decades to push Congress to expand workplace protections against discrimination to cover them and their peers. In the meantime, the U.S. Equal

Employment Opportunity Commission (EEOC) has found a workaround of sorts, involving a rather novel interpretation of existing protections under Title VII of the Civil Rights Act of 1964.

The commission is now claiming that sexual orientation and gender identity are both protected under the aegis of the word "sex."

The EEOC is arguing that federal law prohibiting discrimination on the basis of whether an employee is a man or a woman *also* prohibits discrimination on the basis of sexual orientation and gender identity. The justification presented by the EEOC is that previous judicial precedents have covered same-sex harassment or harassment based on perceptions of a worker's "failure to conform to gender stereotypes." Yet even that broad interpretation is technically about sex, not sexual orientation.

The EEOC also lists court precedents, such as the 1998 Supreme Court decision *Oncale v. Sundowner Offshore Services*. That unanimous ruling extended workplace sexual harassment protections to same-sex situations, meaning that men could be found guilty of sexually harassing other men, but neither man needed to be gay for such a dynamic to happen.

The commission's decision is not binding and could be overruled by the courts, which have taken a dim view in recent years of other EEOC legal arguments and have tossed several lawsuits out. 

SpaceX explosion

Mission Failure

Katherine Mangu-Ward

IN JUNE, SpaceX—a private company charged with ferrying goods (and eventually people) to the International Space Station—experienced its first major setback in seven years when a Falcon 9 rocket exploded during a mission to deliver 4,000 pounds of supplies. The company's early analysis of the milliseconds leading up to the explosion, which

happened shortly after launch from Cape Canaveral, pointed to the failure of a steel strut designed to support a canister of helium, but a more thorough investigation is ongoing.

SpaceX CEO Elon Musk called the explosion "a huge blow" for the company, but NASA's Bill Gerstenmaier told *Popular Science* that SpaceX is still on track to deliver astronauts to the space station by 2017. "We'll learn from these events," said Gerstenmaier, "and we'll get stronger."

In comments to press after the explosion, Musk noted that the Dragon capsule, where the goods were stored and where the people will ride during manned missions, was unharmed and could have been saved if parachutes had been programmed to deploy. Musk said he would add that capability to SpaceX's next generation capsule, Dragon 2.

The company has already completed six missions out of a projected 12 as part of a \$1.6 billion deal with NASA. 

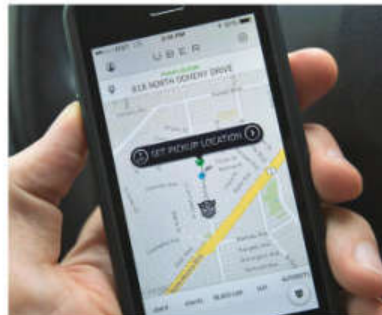
Ride-booking regs

Uber Targeted


Brian Doherty

IN 2013, California became the first state to issue regulations normalizing the legal status of ride-booking smartphone apps. Now it's vying on a couple of fronts to crush Uber, the biggest company providing that service.


Two ongoing legal matters are creating a pincer, one through fines and the other by making the business model far more expensive. In July, an administrative judge with California's Public Utility Commis-




Quotes

"Oh, you played a prostitute in a movie? I played a nurse in a porno. Does that qualify me to talk about working conditions in hospitals?" 


—tweet from adult film actress Stoya, responding to a celebrity campaign against decriminalizing prostitution, July 26

"Children only are being put in more danger when marijuana is kept illegal." 

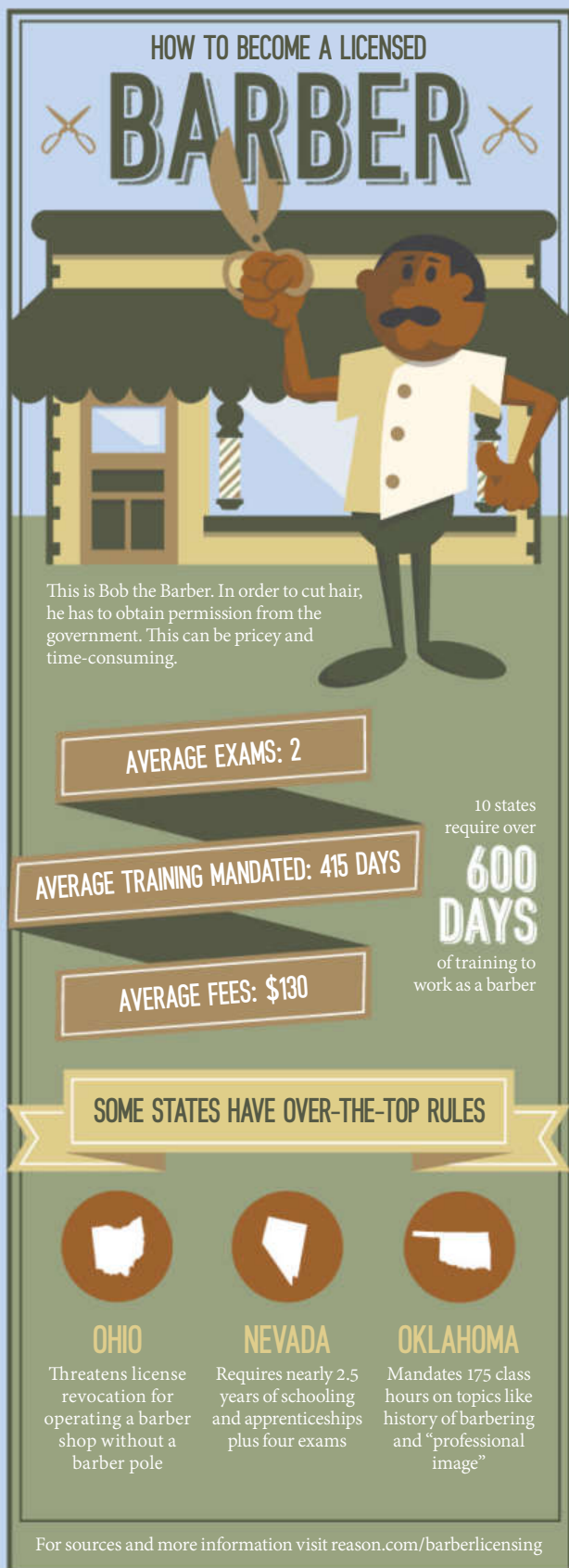
—part of pro-legalization text accidentally posted to the D.A.R.E. website, July 27

"[Banning foreign condoms] will simply make one more disciplined, more strict and discriminating in choosing partners, and maybe will do a favor to our society in respect to solving demographic problems." 

—former Russian health chief Gennady Onishchenko, commenting on a proposal from that country's Industry and Trade Ministry to ban all condom imports, *The Moscow Times*, August 5

"Unborn black lives also matter." 

—former Rep. Ron Paul in a column published at his website, August 2



➤ sion ruled that Uber had failed to pass on legally required accident records and information regarding disabled use of and access to the service. The judge wants to hit Uber with a \$7.3 million fine and pull its license to operate in the state until she's satisfied with the company's data reporting. As of press time, Uber says it will appeal the decision.

Simultaneously, a lawsuit in the state is claiming that Uber illegally classifies its drivers, who use the app to connect with customers, as contractors, not employees. Uber neither provides equipment nor dictates hours worked nor supervises the manner in which the work is done, unlike traditional employers.

The tech website *Re/code* calculated that treating California Uber drivers as employees would cost the company an additional \$209 million per year at current driver levels. ■

Freedom of information \$77,000 Question

C.R. Denning

FREEDOM OF Information Acts (FOIAs) are intended to make it easy for citizens to obtain government documents. But when Michigan mom Sherry Smith filed a request for email records regarding her special-needs son, Goodrich Area Schools told her it would cost \$77,718.75.

"It will be necessary to hire someone to assist us with sorting through the email content you have requested," Superintendent Michelle Imbrunone wrote in response to Smith's request. "The current estimate is that it may require up to 4,687.5 hours at the current clerical hourly employee rate of \$16.58 per hour."

In July, Michigan amended its FOIA law to prevent public bodies from refusing, delaying, or charging "unreasonable fees" to fulfill requests. Republican Gov. Rick Snyder said the changes should remind government employees that they "are working on behalf of our residents, who should not be discouraged from learning about

how that government is serving them."

With help from Phil Ellison, a local attorney specializing in FOIA law, Smith filed a new request under the amended law. When the school system didn't respond within the required 21-day timeframe, Ellison filed a legal action against the bureaucracy for failing to comply with regulations.

Less than a week later, Ellison received "hundreds of pages of emails" from the school system. "Apparently, it didn't take—surprise, surprise—4,000 hours to complete the request," he says. "There was no charge either." ■

Obama's commutations

Room to Improve

Jacob Sullum

PRESIDENT OBAMA, who during his first term commuted exactly one sentence, has picked up the pace recently. As of July, he had granted early releases to a total of 89 prisoners.

Last year the Justice Department signaled a new openness to clemency petitions, laying out criteria for the sort of applications the president wanted to see. An unnamed "senior administration official" told Yahoo! News the new guidelines could result in commutations for "hundreds, perhaps thousands" of federal prisoners by the end of Obama's second term.

The president will have to try harder if he wants to reach that goal. An estimated 8,800 prisoners could benefit just from retroactive application of the shorter crack cocaine sentences



that Congress approved in 2010. They are serving terms that pretty much everyone, including the president, now considers unjust.

Of the 30,000 prisoners who have contacted the Clemency Project—a joint effort by the American Bar Association, the American Civil Liberties Union, the National Association of Criminal Defense Lawyers, and Families Against Mandatory Minimums—since April 2014, some 13,000 had been screened out as of July because they did not meet the government's criteria. The project had sent the Justice Department about 50 applications, eight of which had been granted. **G**

Classroom oversight

The New Sex Ed

Elizabeth Nolan Brown

LAWMAKERS ARE looking to revamp American sex education, but this time around the focus isn't on abstinence, birth control, or any of the usual suspects. The Teach Safe Relationships Act of 2015, sponsored by Sen. Tim Kaine (D-Va.), would introduce "safe relationship behavior"—including affirmative consent and sexual-assault prevention—into sex-ed curricula.

Kaine's bill was inspired by conversations with University of Virginia students following the publication of *Rolling Stone's* now-discredited article about rape on their campus. Originally introduced (and stalled) in February 2015, it has since been rolled into the Every Child Achieves Act—an overhaul of the Bush-era No Child Left Behind law—which passed the Senate with strong bipartisan support in July.

The bill calls for education that "teaches students to recognize and prevent coercion, violence, or abuse, including physical and emotional relationship abuse," and "includes education regarding relationship skills, emotional health, accountability, and well-being in relationships, and consent." Consent is defined in the bill as

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Police in Merseyside, England, have agreed to pay £5,000 to settle a false arrest claim by George Wilson. Wilson was arrested for giving a homeless man £1 by a police officer who thought it was a drug deal.

Albuquerque firefighter Matthew Sanchez has resigned after snapping at a 911 caller trying to keep a teenage shooting victim alive. Sanchez was working as an emergency dispatcher at the time. The caller got angry when he repeatedly asked if the boy was breathing. "He is barely breathing, how many times do I have to [expletive] tell you?" she said. "OK, you know what ma'am? You can deal with it yourself," Sanchez responded. Then he apparently hung up the phone. The victim later died.

The state of Georgia has sued Carl Malamud, owner of government-watchdog website, for publishing the annotated state code online. The state contends that its legal code is copyrighted.



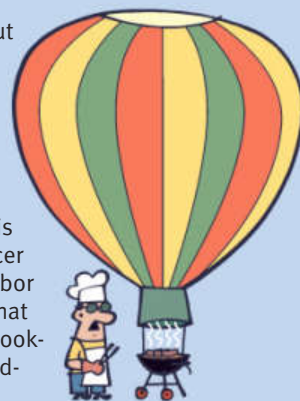
Josh Goetz bought a 2006 Trailblazer from a used car dealer back in March. Two months later, New York state police seized it as part of a murder investigation and tore it apart. Goetz says when he asked the cops to reimburse him, they said he'd have to hire a lawyer.

(Illustrations: Terry Colton.com)

The Law Society of Alberta is threatening to sanction journalist and attorney Ezra Levant for a newspaper column calling the Alberta Human Rights Commission "crazy." Levant could be fined, suspended, or disbarred.

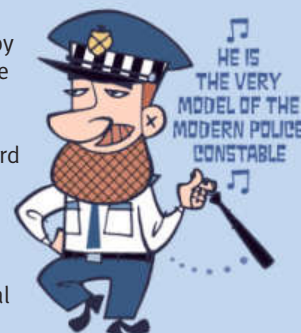
The Christian owner of an Olympia pharmacy says that forcing him to sell the morning-after pill, which he considers an abortifacient, violates his religious freedom. But the U.S. 9th Circuit Court of Appeals upheld a requirement that Washington pharmacies dispense all drugs approved by the Food and Drug Administration.

During a recent cookout at his Florida home, Scotty Jordan got a visit from a Pinellas County code enforcement officer who warned him he'd have to keep the smell on his own property. The officer explained that a neighbor had complained and that the county code says cooking odors can be considered a nuisance.



A Virginia judge recently vacated Mark Weiner's conviction for kidnapping a woman, freeing him after two and a half years in prison. There was never any physical evidence against him, only the word of the woman who claimed he kidnapped her. Indeed, the only physical evidence supported his side of the story, which may explain why the prosecutor tried to keep the defense from introducing it at trial. But none of that made a difference until his accuser was charged with selling drugs earlier this year, which the prosecutor now says makes her testimony unreliable.

In England, police officers employed by the Gloucestershire constabulary aren't happy with a new dress code that requires officers who aren't clean-shaven to wear a beard net while on duty. A statement from the department says it's important for officers to have a professional appearance.



Charles Oliver

The Sun Hasn't Set on Capitalism

Ed Krayewski

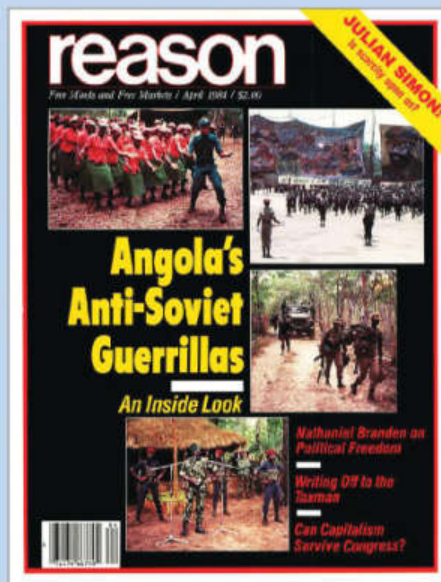
What is the state of American capitalism today? It's easy to be pessimistic. Hillary Clinton, the Democratic presidential frontrunner, thinks it's a political winner to criticize the "gig economy" that allows people to earn money on their own terms, be it selling homemade crafts on Etsy or ferrying passengers around town for Lyft. And just behind Clinton in the Democratic race is Bernie Sanders, a self-avowed socialist who likes to say the U.S. should be more like Scandinavia.

The idea that free enterprise is on the outs is nothing new. In a speech adapted for the April 1984 *reason*, William H. Meckling and James E. Gleason argued that capitalism was in dire straits. They were rebutting a 1981 essay by Nobel Prize winner George Stigler, who posited that capitalism was at "high noon" because American business owners had achieved the power to influence regulations for their own benefit.

In "American Capitalism at Sunset," Meckling and Gleason noted that there's "no good reason that the health of capitalism should be identified with the success of businessmen in tapping the political process," because free market capitalism and crony capitalism are not the same thing. The authors pointed to the proliferation of regulations as evidence that capitalism was, in fact, faltering.

"A more reliable measure of capitalism's role in society is...the fraction of output accounted for by government expenditures. By that measure, the descent of capitalism from its zenith began long ago," they wrote. "Other indicators that lead to the same conclusion are the fraction of wealth owned by governments, and the extent to which private industry is being nationalized."

Thirty years on, business executives continue to collude with lawmakers for their mutual benefit. The Affordable Care Act imposed an unprecedented level of control over health insurance



decision making, while billions in "green energy" subsidies have been funneled to connected industries under the auspices of fighting climate change. The Heritage Foundation estimates that the Obama administration imposed 26 new major rules in 2013 alone.

But the last three decades have also seen a worldwide reduction in poverty of unparalleled magnitude. The fall of communism and a proliferation of new technologies made possible by freer markets has fueled wealth creation like nothing seen before. Cronyism and overregulation remain problems, but as long as people are free to exchange goods and services, the sun hasn't set on capitalism yet.

ship Program to be a violation of the state's Constitution.

The arguments hinged on the North Carolina Constitution's "public purpose" doctrine, which provides that "the power of taxation be exercised in a just and equitable manner, for public purposes only."

"The main constitutional flaw in this program is that it provides no framework at all for evaluating any of the participating schools' contribution to public purposes," Justice Robin Hudson wrote in her dissent. But Chief Justice Mark Martin, writing for the majority, argued that giving low-income kids additional educational opportunities benefits the "collective citizenry," and therefore fulfills a public purpose. ■

Trust fund depletion

Social Insecurity

Peter Suderman

WHAT HAPPENS when the Social Security trust fund runs out of money? Millions of people may find out soon. The program's disability insurance (D.I.) trust fund—a legally separate and distinct entity from the one that pays retirement benefits—is set to run dry, the Obama administration admitted in July.

A report from Social Security's public trustees estimates that the trust fund will be depleted at the end of 2016, leaving the program to pay out benefits based only on revenues collected from payroll taxes. But the revenue generated by those taxes is only expected to cover about 81 percent of the program's expenditures, leaving an estimated 11 million people without their full benefits.

The Obama administration called on Congress to pass legislation allowing some funds to be transferred from the main Social Security trust fund to the D.I. trust fund. The program's trustees grudgingly agree, but also note that Congress has already done this once before, in 1994, when the trust fund faced a similar shortfall. That move was designed to give policy makers

- ▶ "affirmative, unambiguous, and voluntary agreement" to engage in sexual activity.

Under the legislation, school districts would not be required to teach "the promotion of safe and healthy relationships" but sex-ed programs that don't include it would be excluded from receiving certain federal funds.

The House of Representatives passed its own No Child Left Behind update that does not include a safe-relationships provision; leaders in the two

chambers are now working to reconcile the bills. Meanwhile, House Democrats are pushing their own version of the Teach Safe Relationships Act. ■

School choice upheld

A Win for Vouchers

C.R. Denning

IN JULY, the North Carolina Supreme Court ruled 4-3 in favor of the state's school voucher program, which provides state funds to low-income students

who wish to attend private schools. The decision reversed a 2014 superior court ruling that found the Opportunity Scholar-



time to enact broader systemic reforms that would make the program sustainable.

Instead, it merely delayed the reckoning. As a result, the report says, “there are fewer reform options available now than there were in the 1990s, when the projected date of reserve depletion was more distant.” Another reallocation plan would likely “serve to delay DI reforms and much needed corrections for [old age, survivor, and disability insurance] as a whole.” In other words, the entire program is in need of drastic reform. **E**

FOIA fail

No Public Access

Ed Krayewski

THIS SUMMER, the Maryland Court of Appeals, that state’s highest court, ruled in *Dasbiell v. Maryland State Police* that “records of an internal investigation pertaining to the sustained violation of administrative rules” are “personnel records” that should not be disclosed under the Maryland Public Information Act. The findings of internal investigations, in other words, are now exempt from transparency requirements.

The decision resolved a lawsuit brought by the American Civil Liberties Union on behalf of Taleta Dasbiell, who had been trying to obtain information on a sustained complaint against an officer who called her a “nigger” twice on her voicemail. In filing a records request, Dasbiell argued she was a “person of interest,” since she filed the complaint, and was therefore exempt from the “personnel records” exemption. The high court disagreed.

In her dissent, Judge Shirley Watts argued that “a record of discipline based on a sustained complaint against a law enforcement officer is not a personnel record” but “among the very types of document that the Public Information Act is designed to make available to the public,” because it shows how a government agency responds to proven misconduct. **E**

Dodd-Frank and Death in the Congo

Stephanie Slade



Dominic Parker

Section 1502 of the Dodd-Frank financial reform law was supposed to reduce violent conflict in the Democratic Republic of the Congo (DRC) by imposing a *de facto* embargo on tin, tungsten, and tantalum—the so-called 3T minerals—mined in militia-controlled territories. But a working paper from University of Wisconsin economist Dominic Parker suggests the actual outcome of the legislation in the two years after it was passed in 2010 was very different. In July, Deputy Managing Editor Stephanie Slade talked with Parker about his research.

Q: In a nutshell, what did you find?

A: We found statistical evidence that Dodd-Frank backfired. Our latest estimate suggests that Section 1502 tripled the frequency of looting incidents and attacks against civilian populations.

Q: Tell me about the analogy between militias in the DRC and mafias.

A: We developed a simple theory that’s inspired by [economist] Mancur Olson’s “stationary bandits” metaphor. In our theory, stationary bandits are like mafia groups that tax neighborhoods or industries. And these mafia groups emerge in power vacuums where the state is absent, and they maximize revenues by, effectively, selling protection to civilians. The protection is both against crime they would commit if not paid these taxes and also, importantly, against crime that could be committed by other groups.

What’s really important here is that because the mafia taxes economic activity, it wants the neighborhood that it controls to be safe and productive. So you get this low-violence situation that will persist as long as the mafia group finds it advantageous to remain stationed in the neighborhood, rather than moving to challenge other [groups] or to loot other neighborhoods. In the eastern DRC, the militias are like the mafia groups. The mining villages are like these neighborhoods.

Q: But Dodd-Frank pushed these groups to change their strategy.

A: Yeah. After Dodd-Frank was passed, we theorized that militia groups had three main options for continuing to raise revenues. The first is they could remain stationed in these 3T mining areas and continue to tax mineral production there. But Dodd-Frank made this option much less attractive because it dramatically lowered demand for the 3T minerals.

The second option is the militia groups could relocate and battle other groups for the right to control and tax the gold-mining territories. And this option was attractive to some groups, because the local price of gold stayed high after Dodd-Frank.

The third option is that this militia group could generate revenue by looting villages, and by roving—taking civilian assets in unpredictable ways and at unpredictable times, which makes them quite dangerous.

Our evidence suggests that Dodd-Frank converted these militia groups from the relatively safe stationary bandits to the more dangerous roving bandits. And the roving bandit doesn’t have a long-run stake in the economic productivity of a place, so he takes what he can get now with little regard for how his [ransacking and stealing] will affect future productivity.

Q: What is the takeaway if we want to help the people in the DRC?

A: This is a tough problem, but I think the policy solution is not a blanket boycott.

Q: It’s almost a textbook story about how, when you change incentives, sometimes people’s behavior changes in ways that you weren’t expecting.

A: That’s exactly right. It’s a cautionary tale about what can go wrong when there’s a top-down policy intervention that misunderstands the incentives that the on-the-ground actors face. You can get a result like this, you can get backfiring, and you can get really nasty consequences.



The Feds Shouldn't Prosecute Dylann Roof

Redundant charges against the Charleston shooter highlight the unconstitutional absurdity of the federal hate crime statute.

DYLANN ROOF, the man charged with murdering nine people at the Emanuel AME Church in Charleston, South Carolina, in June, faces execution or life imprisonment if he is convicted in state court. A federal indictment announced in July threatens him with the same penalties, although you can't kill a man more than once or lock him up for more than a lifetime.

What looks like a redundant prosecution is actually something worse. It is an unconstitutional attempt to federalize a crime that South Carolina's courts are perfectly capable of handling, for the sake of sending a message that the criminal law should not be used to send.

The New York Times reports that "Justice Department and F.B.I. officials have said the Charleston shooting was so horrific and racially motivated that the federal government must address it." Noting that "South Carolina does not have a hate crime law," the *Times* says the feds worry that "a murder case alone would leave the racial component of the crime unaddressed."

In other words, by charging Roof with murdering people "because of their actual and perceived race and color," the Justice Department condemns his benighted beliefs as well as his appalling actions. The *Times* notes that the evidence against Roof includes his "racist Internet manifesto" as well as his anti-black com-

ments as he shot parishioners at the church.

Since Roof already faces the maximum penalty under state law, he can hardly receive extra punishment for his bigotry. But defendants in less serious cases can and do: An assault that might be punished by a year or two in prison under state law can trigger a sentence up to 10 years under the federal hate crime statute if the defendant has a history of writing or saying racist stuff.

In fact, the offender in such a case can be punished twice for the same crime, once under state law and again under federal law. And if he happens to be acquitted in state court, he can be tried again in federal court.

This sort of serial prosecution looks a lot like double jeopardy, which is prohibited by the Fifth Amendment. But according to the Supreme Court, it is merely "dual sovereignty": The same action is two crimes, one for each government that has jurisdiction.

You may wonder where Congress got the authority to federalize a crime based on the nasty opinions expressed by the person who committed it. The provision under which Roof was charged, which applies to cases where the victim was chosen because of his "actual or perceived race, color, religion, or national origin," is supposedly authorized by the 13th Amendment.

If you do not understand how the

constitutional ban on slavery applies to someone who punches an African American or a Latino while shouting a racial epithet, or to someone who specializes in mugging Jews because he figures they have a lot of money, you are not alone. As the Cato Institute and Reason Foundation (which publishes this magazine) noted in a 2013 Supreme Court brief, the provision cited in Roof's federal indictment "does not prohibit slavery or involuntary servitude"; "nor is it a prophylactic measure intended to assist in preventing the return of slavery or involuntary servitude."

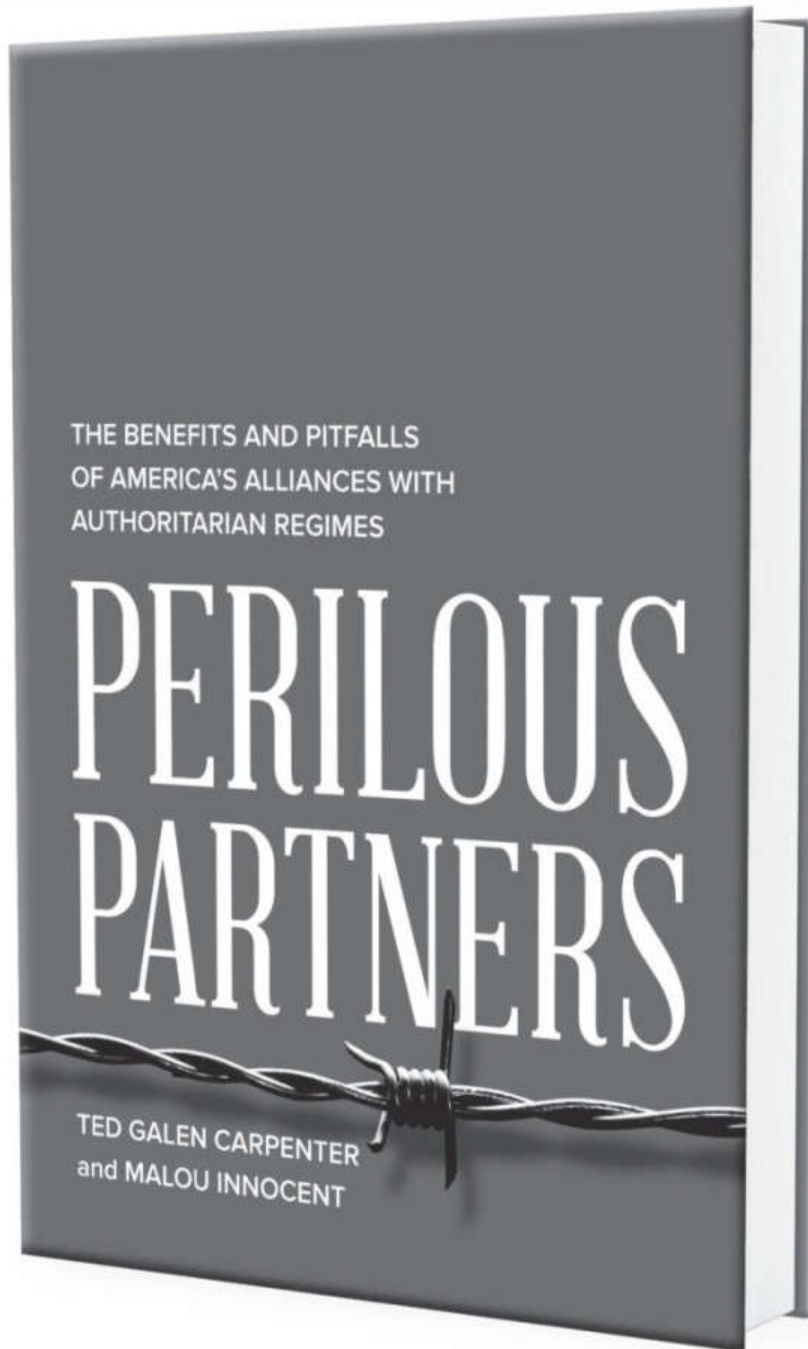
The constitutional rationale for another provision of the federal hate crime law, covering crimes in which the victims were selected because of their "gender, sexual orientation, gender identity, or disability," is even less plausible. All it takes to make a federal case out of such a crime is a weapon "that has traveled in interstate or foreign commerce."

The farcical justifications for the federal hate crime statute are especially troubling because there is no reason to think the offenders it covers would otherwise go unpunished. If the Charleston massacre is exactly the sort of crime the law was meant to address, that just shows how gratuitous the law is. ■

Senior Editor Jacob Sullum (jsullum@reason.com) is a nationally syndicated columnist.
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Let States Build Their Own Highways

Congress can't pass a real transportation bill. And it shouldn't have to.

WHEN CONGRESS left town for the August recess, it did so without coming to an agreement on a long-term transportation bill. Instead, the president signed a three-month extension that set the stage for another showdown this fall. More than 30 such temporary extensions have passed since the last multi-year transportation bill expired in 2011.

The inability of Congress to come together to pass a transportation package has frustrated the myriad special interests whose lobbyists want assurances that the dollars will keep flowing for years, and not just months, to come. And the media, which seldom miss an opportunity to push the “crumbling infrastructure” narrative, treat the matter as just another lamentable example of congressional gridlock inhibiting progress. But the real source of the dysfunction is the fact that Washington is so involved in state and local transportation funding decisions in the first place.

In July the Senate passed a six-year, \$320 billion transportation bill that the House subsequently refused to take up—primarily because it would authorize spending for six years but only provide enough revenue to pay for the first three. Another \$51 billion would have to be found for the final three years.

Not only that, but almost \$48 billion in additional revenues would be needed to cover the first three years' worth of spending beyond what the federal gas tax and related fuel taxes are set to provide. Under the bill, that money would come from a number of provisions that have little or nothing to do with transportation. For example, an estimated \$9 billion is supposed to be raised from the sale of 101 million barrels of oil from the Strategic Petroleum Reserve, and an estimated \$17.1 billion is sup-

posed to come from lowering the interest rate on dividends that banks purchase from the Federal Reserve.

These unrelated offsets do not belong in a transportation bill, needless to say.

Most of the financing gimmicks won't actually pay for the spending that will occur in the next three years anyway. Taxpayers for Common Sense found that more than 90 percent of the offsets don't kick in until after the initial spending splurge, and two-thirds of the cash won't be collected until after the six-year life of the bill. In its July 31 *Weekly Wastebasket* blog post, Taxpayers for Common Sense wrote that to raise money, the bill “would extend current budget treatment of [Transportation Security Administration] fees from 2023 to 2025, worth \$3.5 billion.”

The federal gas tax, which has been the traditional source of revenue to pay for transportation spending, is at the heart of why Congress has been unable to pass a long-term bill. Federal gas tax revenues haven't been enough to cover the amount Congress has authorized to be spent on transportation infrastructure in recent years, forcing policy makers to transfer more than \$60 billion in general funds to the Highway Trust Fund (HTF) just since 2008.

Proponents of hiking the gas tax—currently 18.4 cents a gallon—point out that it hasn't increased since the mid-1990s. They correctly note that price inflation has eroded the revenue's “purchasing power” in the intervening period.

The federal gas tax, however, was originally created in 1932 as a “temporary” deficit-reduction measure. It was used to pay the federal government's regular bills until the national interstate system was created in 1956, at which

point revenues from the gas tax were redirected to the newly created HTF. The idea was that the tax would act as a “user fee,” in that people who traveled the roads financed by the fund would effectively pay for the privilege when they bought fuel.

But as is often the case with government programs, the trust fund has ended up being used to cover parochial projects that do not benefit Interstate drivers in particular—or the nation as a whole. For instance, under the current Senate bill, 25 percent of the funding would go to state and local transit systems rather than highway construction or maintenance.

With those expansions in the HTF’s mission came increases in the gas tax, until further hikes finally became politically untenable. Not surprisingly, the special interests who benefit from government transportation spending, including the business community, have been pushing for an increase in the tax for years. But Republicans have been reluctant to embrace one.

Opponents generally fall into two camps: First is a small contingent that favors spending only what the current gas tax (and related fuel taxes) brings in. That would be about \$34 billion a year. Second is a majority that wants to find a way to spend more than \$50 billion a year *without* raising the gas tax. That’s what the Senate bill would do.

A better approach would be for

Congress to devolve transportation spending to the states. There is little sense in the federal government taking money from people through the gas tax, running it through the federal bureaucracy, and then sending it back to the states via politically con-

ceived transportation spending formulas. Those politically driven decisions ultimately produce wasteful projects like the Big Dig in Boston, Interstate 99 in Pennsylvania, and the Bridge to Nowhere in Alaska.

State and local governments are perfectly able to handle the process of funding their own transportation needs, as demonstrated by the fact that they already pay for approximately three-quarters of total highway and mass transit spending.

In 2014 testimony to the Senate Finance Committee, the Cato Institute’s Chris Edwards noted that the HTF’s misallocation of resources creates winner and loser states, with the losers often being those that actually need the highway funds most. Citing a study by Pengyu Zhu of Boise State University and Jeffrey Brown of Florida State University, Edwards noted that highway aid “has been biased against states that have larger highway systems and more highway use, thus biased against states with greater needs.”

Transferring funding decisions away

from Washington would also create better incentives for state policy makers. If they believe more money for transportation projects is needed, they should make the case to their constituents for higher taxes. Indeed, state gas taxes went up in six states on July 1, and other states have also passed increases in transportation-related taxes in recent years.

This change would also free states from the numerous mandates that come with receiving funds from the federal government, like the pro-union Davis-Bacon rules, which unnecessarily increase the cost of transportation projects by approximately 10 percent by requir-

ing heavy use of organized labor, and the Reagan-era law that allows the federal government to withhold 10 percent of a state’s highway funds if it dares to allow people under the age of 21 to legally purchase and consume alcohol. These inefficient one-size-fits-all mandates are clear abuses of federal power.

Given that members of both parties enjoy having a large federal role in transportation policy, momentum for devolving spending to the states is unlikely to originate with Congress. Still, it would be nice if even a couple of the current Republican aspirants to the White House made good on their supposed limited government values by supporting a move toward subsidiarity in transportation.

None has so far, while several are actively working to maintain the status quo. A few months ago, Sen. Rand Paul (R-Ky.) co-sponsored with Sen. Barbara Boxer (D-Calif.) the Invest in Transportation Act of 2015. That bill would reduce the U.S. corporate tax rate on foreign-source earnings from 35 percent to 6.5 percent for five years if the earnings are repatriated to the United States. All that new revenue would go to the HTF, thus avoiding, according to Paul and Boxer, the need to increase the federal gas tax.

As far as repatriation bills go, this might be the least terrible we’ve seen. But that’s faint praise. Paul is focused not on making the case for reforming a punishing corporate income tax but on the good that would allegedly come from the federal government raising *more* tax dollars for infrastructure spending. There’s nothing free-market about that. ■

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Everybody Loves a Good Apocalypse

Even as the world gets better and better, people continue to stubbornly believe the end is nigh.

A MAJORITY OF people—54 percent—surveyed in the United States, Canada, Australia, and the United Kingdom believe there's a risk of 50 percent or more that our way of life will end within the next 100 years. Even more ominously, some 25 percent of respondents in the same poll believe it likely that we'll go extinct in the next century. Americans were the most pessimistic, giving those answers 57 percent and 30 percent of the time, respectively. And younger respondents tend to be more gloomy about the future than older ones.

These results were recently reported by the Australian futurists Melanie Randle and Richard Eckersley in the journal *Futures*. The authors also document that cultural pessimism is increasing. Polls taken in 2005 and 1995 asked young Australians to choose between two statements: "By continuing on its current path of economic and technological development, humanity will overcome the obstacles it faces and enter a new age of peace and prosperity" vs. "More people, environmental destruction, new diseases and ethnic and regional conflicts mean the world is heading for a bad time of crisis and trouble." In 2005, only 16 percent of respondents thought it was likely to be "a new age of peace and prosperity," down from 41 percent in 1995. Sixty-five percent opted for "a bad time of crisis and trouble," up from 55 percent in 1995.

Earlier surveys similarly found large segments of the world's population believing that the end is nigh. In a 2012 Reuters poll covering more than 20 countries, 15 percent of the respondents said the world will end during their lives. This February a YouGov poll of Americans asked, "How likely do you think it is that an apocalyptic disaster will strike in your lifetime?" Nearly one-third answered that

it was very to somewhat likely.

The Australian researchers themselves apparently think the world as we know it is at significant risk of coming to an end. "Scientific evidence and concern are mounting that humanity faces a defining moment in history," they assert, "a time when we must address growing adversities, or suffer grave consequences." What growing adversities? They uncritically recite the conventional litany of global doom: "climate change and its many, potentially catastrophic, impacts; other threats include depletion and degradation of natural resources and ecosystems; continuing world population growth; disease pandemics; global economic collapse; nuclear and biological war and terrorism; and runaway technological change."

In his 1974 book *Disaster and the Millennium*, the Syracuse political scientist Michael Barkun wrote: "The apocalyptic myths of the last several decades have been cast on a global scale: world depression, world war, nuclear holocaust, overpopulation, ecological disaster...the imagination of disaster has become fixated on world-wide catastrophe." Forty years later, the same myths of impending global disaster are still being widely preached. In a 2013 article for the prestigious *Proceedings of the Royal Society B*, the Stanford biologists Paul and Anne Ehrlich asked, "Can a collapse of global civilization be avoided?" Their short answer: no.

This pervasive pessimism about the human prospect flies in the face of a plain fact: Over the past century, the prospects and circumstances of most of humanity have improved spectacularly. Depending on how you calculate it, world per capita GDP has increased between fivefold and tenfold since 1900. Average life

expectancy has more than doubled in the same period, and we live in the most peaceful time in history.

As the British historian Thomas Babington Macaulay wrote in 1830, “We cannot absolutely prove that those are in error who tell us that society has reached a turning point, that we have seen our best days. But so said all before us, and with just as much apparent reason.” Macaulay then asked, “On what principle is it that, when we see nothing but improvement behind us, we are to expect nothing but deterioration before us?”

Maybe because it’s exciting to think that your generation is the last. Your generation just happens to be living at the hinge point of history. “There is seduction in apocalyptic thinking. If one lives in the Last Days, one’s actions, one’s very life, take on historical meaning and no small measure of poignance,” wrote the University of Vermont lecturer Eric Zencey in 1988. “Apocalypticism fulfills a desire to escape the flow of real and ordinary time, to fix the flow of history into a single moment of overwhelming importance.”

Millenarianism—the belief in a coming major transformation of society, after which all things will be changed—has always been attractive to some portion of humanity. But earlier millenarian ideologies were more likely to predict that good would triumph over evil and the future be transformed in a positive way: that Christ would return to establish his peaceful kingdom or the proletariat would overthrow the oppressive capitalists and abolish the state.

In this new *Futures* study, the Australian researchers find that among those who believe humanity

is likely to go extinct soon, a majority endorses both nihilism *and* activism. Sixty percent agree that “the world’s future looks grim so we have to focus on looking after ourselves and those we love”; 77 percent endorse the idea that “we need to transform our worldview and way of life if we are to create a better future for the world.” Interestingly, the Ehrlichs’ *Royal Society B* article expresses a similar combination of pessimism and interventionism, telling us that “the odds of avoiding collapse seem small” but we should “try to accelerate change towards sustainability.”

In 1982, the brilliant futurist Herman Kahn published *The Coming Boom*, in which he pleaded for the re-establishment of “an ideology of progress.” Kahn warned:

“Two out of three Americans polled in recent years believe that their grandchildren will not live as well as they do, i.e., they tend to believe the vision of the future that is taught in our school system. Almost every child is told that we are running out of resources; that we are robbing future generations when we use these scarce, irreplaceable, or nonrenewable resources in silly, frivolous and wasteful ways; that we are callously polluting the environment beyond control; that we are recklessly destroying the ecology beyond repair; that we are knowingly distributing foods which give people cancer and other ailments but continue to do so in order to make a profit.

“It would be hard to describe a more unhealthy, immoral, and disastrous educational context, every element of which is either largely incorrect, misleading, overstated, or just plain wrong. What the school

system describes, and what so many Americans believe, is a prescription for low morale, higher prices and greater (and unnecessary) regulations.”

Three decades later, large swaths of the Western intellectual classes still preach an apocalyptic anti-progress ideology. As the *Futures* survey shows, corrosive pessimism has clearly trickled down and is demoralizing many citizens. Such cultural gloom is a significant drag on scientific, technological, and policy innovation. Overcoming that pervasive pessimism and restoring the belief in human progress is one of the most important philosophical and political projects for the 21st century. ■

Science Correspondent Ronald Bailey (rbailey@reason.com) is the author of The End of Doom: Environmental Renewal in the 21st Century (St. Martin’s).

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The War on Sex Trafficking Is the New War on Drugs

And the results will be just as disastrous, for “perpetrators” and “victims” alike.

Elizabeth Nolan Brown

“SEX TRAFFICKING of Americans: The Girls Next Door.”

“Sex-trafficking sweep nets arrests near Phoenix truck stops.”

“Man becomes 1st jailed under new human trafficking law.”

Conduct a Google news search for the word *trafficking* in 2015 and you’ll find pages of stories about the commercial sex trade, in which hundreds of thousands of U.S. women and children are supposedly trapped by coercion or force.

A few decades prior, a survey of “trafficking” headlines would have yielded much different results. Back then, newspapers recounted tales of “contemporary Al Capones trafficking illegal drugs to the smallest villages and towns in our heartland,” and of organized “motorcycle gangs” trafficking LSD and hashish. “Many young black men in the ghetto see the drug trade as the Gold Rush of the 1980s,” the *Philadelphia Inquirer* told readers in 1988. The National Center for Missing and Exploited Children (NCMEC) warned of a “nationwide phenomenon” of drug lords abducting young people to force them into the drug trade. Crack kingpins were rumored to tar-

get runaways, beating them if they didn’t make drug sales quotas.

Such articles offered a breathless sense that the drug trade was booming, irresistible to criminals, and in desperate need of child foot soldiers. Lawmakers touted harsher penalties for drug offenses. The war on drugs raged. New task forces were created. Civilians were trained how to “spot” drug traffickers in the wild, and students instructed how to rat out drug-using parents. Politicians spoke of a drug “epidemic” overtaking America, its urgency obviously grounds for anything we could throw its way.

We know now how that all worked out.

The tactics employed to “get tough” on drugs ended up entangling millions in the criminal justice system, sanctioning increasingly intrusive and violent policing practices, worsening tensions between law enforcement and marginalized communities, and degrading the constitutional rights of all Americans. Yet even as the drug war’s failures and costs become more apparent, the Land of the Free is enthusiastically repeating the same mistakes when it comes to sex trafficking. This new “epidemic” inspires the same panicked rhetoric and punitive policies the war on drugs did—often for activity that’s every bit as victimless.

Forcing others into sex or any sort of labor is abhorrent, and it deserves to be treated like the serious violation it is.

But the activity now targeted under anti-trafficking efforts includes everything from offering or soliciting paid sex, to living with a sex worker, to running a classified advertising website.

What's more, these new laws aren't organic responses by legislators in the face of an uptick in human trafficking activity or inadequate current statutes. They are in large part the result of a decades-long anti-prostitution crusade from Christian "abolitionists" and anti-sex feminists, pushed along by officials who know a good political opportunity when they see it and by media that never met a moral panic they didn't like.

The fire is fueled by federal money, which sends police departments and activist groups into a grant-grubbing frenzy. The anti-trafficking movement is "just one big federal grant program," Michael Hudson, a scholar with the conservative Hudson Institute, told the *Las Vegas Review-Journal*. "Everybody is more worried about where they're going to get their next grant" than helping victims, Hudson said.

Because of the visceral feelings that the issue of paid sex has always provoked, it's easy for overstatements and false statistics to go unchallenged, winning repetition in congressional hearings and the press. Yet despite all the dire proclamations, there's little evidence of anything approaching an "epidemic" of sexual slavery.

The Numbers Don't Add Up

From 2000 to 2002, the State Department claimed that 50,000 people were trafficked into the U.S. each year for forced sex or labor. By 2003, the agency reduced this estimate to 18,000–20,000, further reducing it to 14,500–17,500 in subsequent reports. That's a 71 percent decrease in just five years, though officials offered no explanation as to how they arrived at these numbers or what accounted for the drastic change. These days, federal agencies tend to stick to the vague "thousands" when discussing numbers of incoming victims.

Globally, some 600,000 to 800,000 people are trafficked across international borders each year, the Department of Homeland Security (DHS) estimates. But the Government Accountability Office (GAO) in 2006 described this figure as "questionable" due to "methodological weaknesses, gaps in data, and numerical discrepancies," including the rather astonishing fact that "the U.S. government's estimate was developed by one person who did not document all his work." And even if he had, there would still be good reasons to doubt the quality of the data, which were compiled from a range of nonprofits, governments, and international organizations, all of which use different definitions of "trafficking."

Glenn Kessler, *The Washington Post's* "Fact Checker" columnist, began digging into government-promulgated sex-slavery numbers last spring and discovered just how dubious many of them are. "Because sex trafficking is considered horrific, politicians appear willing to cite the flimsiest and most poorly researched statistics—and the media is content to treat the claims as solid facts," Kessler concluded in June.

For instance, Rep. Joyce Beatty (D-Ohio) declared in a May statement that "in the U.S., some 300,000 children are at risk each year for commercial sexual exploitation." Rep. Ann Wagner (R-Mo.) made a similar statement that month at a congressional hearing, claiming the statistic came from the Department of Justice (DOJ). *The New York Times* has also attributed this number to the DOJ, while Fox News raised the number to 400,000 and sourced it to the Department of Health and Human Services (HHS). But not only are these *not* DOJ or HHS figures, they're based

Even as the drug war's failures and costs become more apparent, the Land of the Free is enthusiastically repeating the same mistakes when it comes to sex trafficking.

on 1990s data published in a non-peer-reviewed paper that the primary researcher, Richard Estes, no longer endorses. The authors of that study came up with their number by speculating that certain situations—i.e., living in public housing, being a runaway, having foreign parents—place minors *at risk* of potential exploitation by sex traffickers. They then simply counted up the number of kids in those situations. To make a bad measure worse, anyone who fell into more than one category was counted multiple times.

“PLEASE DO NOT CITE THESE NUMBERS,” wrote Michelle Stransky and David Finkelhor of the respected Crimes Against Children Research Center in 2008. “The reality is that we do not currently know how many juveniles are involved in prostitution. Scientifically credible estimates do not exist.” A lengthy 2013 report on child sex trafficking from the Justice Department concluded that “no reliable national estimate exists of the incidence or prevalence of commercial sexual exploitation and sex trafficking of minors in the United States.”

Common sense should preclude believing the 300,000 number in the first place. If even a third of those “at risk” youth were peddled for sex in a given year, we’d be looking at nearly 110,000 victims. And since advocates often claim that victims are forced to have sex with 10, 20, or 30 clients a day, that would be—using the lowest number—1.1 million commercial child rapes in America each day. Even if we assume that child rapists are typically repeat customers, averaging one assault per week, that would still mean nearly 8 million Americans have a robust and ongoing child rape habit, in addition to the alleged millions who pay for sex with adults.

Common sense should also immediately cast doubt on another frequently cited statistic: that the average age at which females become victims of sex trafficking is 13. “If you think about it for half a minute, this statistic makes little sense,” wrote Kessler. “After all, if it is the ‘average,’ then for all those who entered trafficking at age 16 or 17, there have to be nearly equivalent numbers who entered at age 9 or 10. But no one seriously believes that.”

Still, the obvious implausibility of the sta-

tistic—and its routine debunking—hasn’t stopped it from reaching the upper echelons of public discourse. Kessler’s own *Washington Post* ran it uncritically in 2014. Sen. Amy Klobuchar (D-Minn.) made the claim on the Senate floor this year, citing the FBI. The DHS also asserts that “the average age a child is trafficked into the commercial sex trade is between 11 and 14 years old,” sourcing it to the DOJ *and* the government’s NCMEC. Yet none of these federal agencies take responsibility for this stat. When Kessler followed the facts down the rabbit hole, the original source in all cases was...the self-disowned Estes paper, in which interviews with 107 teens doing street-based prostitution in the 1990s determined that their average age of entry into the business was 13.

“So one government agency appears to cite two other government entities—but in the end the source of the data is the same discredited and out-of-date academic paper,” wrote Kessler. “It would be amusing if it were not so sad.”

Author and former sex worker Maggie McNeill has traced other uses of the age-13 figure back to a similarly narrow and unrepresentative study, this one looking at under-age streetwalkers in 1982 San Francisco (“Victimization of Street Prostitutes” by M.H. Silbert and A.M. Pines). Among these interview subjects from three decades ago, the average age of their first *noncommercial* sexual experience was 13. The average age of entry into *prostitution* was 16, and the report made no mention of sex trafficking at all.

Surveys of adults working in the U.S. sex trade have yielded much higher average starting ages. A 2014 Urban Institute study involving 38 sex workers found that only four began before age 15, 10 started between the ages of 15 and 17, another four started in their 30s, and the remaining 20 began sex work between the ages of 18 and 29. A 2011 study, this one from Arizona State University, found that of more than 400 women arrested for prostitution in Phoenix, the average age of entry was about 25.

“Regardless of whether the number is 300,000 or 30,000, something must be done to protect these children at risk of exploitation and trafficking,” said Moira Bagley Smith, a spokeswoman for Rep. Wagner, when Kessler challenged the figure. But it’s exactly this kind of thinking that inflicts real-world policy damage. Whether there are 30,000 or 300,000 crime victims makes a great deal of difference in terms of fashioning an appropriate response, as does the context of the victims’ circumstances. Separating the mythology of sex trafficking from the facts is crucial for addressing problems as they exist, not problems as we might want, fear, or imagine them to be.

A 2010 study from Rutgers University professors James Finckenauer and Ko-lin Chin took an in-depth look at Chinese women working in America's illicit massage parlors, which are routinely denounced by politicians as hotbeds of sexual slavery. Indeed, Finckenauer noted that 93 percent of the women he interviewed would be considered sex trafficking victims under common legal definitions, which include any person who arrives in a foreign country for sex work *regardless* of whether force or coercion is involved. Yet not one of the 149 Chinese women interviewed said she was sold into prostitution, and only one reported being forced or coerced into it. "There is more diversity among the parties involved in prostitution than is commonly supposed, and to portray them all in the same way as victims is an oversimplification," the researchers concluded.

Pimps themselves claim to steer clear of underage sex workers. In interviews with 73 people who had been incarcerated for crimes such as promoting, profiting from, or compelling prostitution, the Urban Institute found

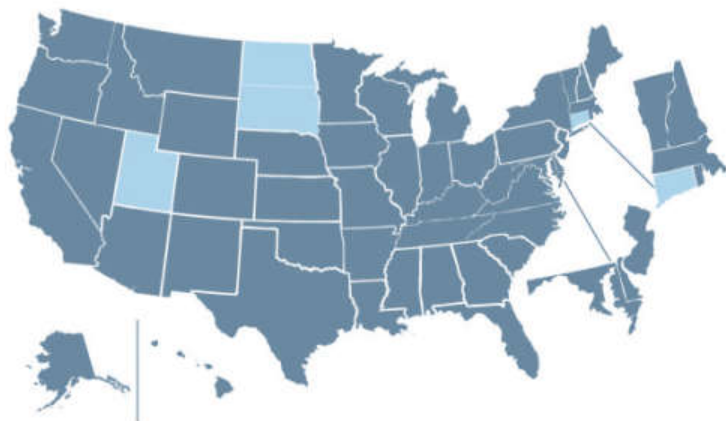
“This particular business ain’t about pimps going to high school and recruiting a girl,” said a third. “Government don’t understand how this game original come about. Girl run away from home, look older than what she is. They think pimps are going out and enticing them.”

By any estimation, teen runaways make up a major proportion of underage individuals in prostitution, forced or otherwise. Runaways are especially likely to engage in what sociologists call “survival sex”—exchanging sex not for a set fee, but for food and a place to crash.

Instead, we fund police task forces to monitor Internet ads for weeks in search of suspect code words or tattoos. We pass laws mandating more prison time for pimps. We set up elaborate sting operations for both sex workers and their customers. We hang “Are you being trafficked?” signs at strip clubs and highway rest stops, and train airport staff on how they can spot the signs of sex trafficking. We act as if sex traffickers are organized, jet-setting, diabolical, and legion. We are chasing our own mythology, to the detriment of actual results.

(Maps by Jason Keisling)

Force, fraud, or coercion not required for conviction



in the U.S. makes this clear. In July 2015, for instance, Homeland Security, the Arizona Department of Public Safety, and other Arizona state agencies conducted a joint “human trafficking enforcement operation” that involved randomly stopping commercial trucks as well as running the license plates of passersby. The 30-agent, nine-hour stunt resulted in 28 stops, the checking of 5,576 license plates...and zero arrests for human trafficking. Police did arrest one woman for prostitution, however, and are continuing to investigate another who said she worked in “adult entertainment.”

Last April, the FBI released its first crime data on state-based trafficking investigations. In the 13 states reporting for last year, law enforcement looked into a total of 14 human trafficking incidents, ultimately making a grand total of four arrests.

Between 2008 and 2010, federally funded task forces investigated 2,515 suspected incidents of human trafficking, according to the Bureau of Justice Statistics. An “investigation” was defined as “any effort in which the task force spent at least one hour investigating” the incident. Of these cases, only 6 percent led to arrests. From 2007 to fall 2008, federal dollars funded 38 sex-trafficking task forces, of which 15 found no confirmed victims or suspects, 14 reported between one and four cases, and nine reported more than five. Of the total 1,229 suspected incidents that year, sex cops found just 14 underage victims.

“Given the obstacles to locating victims in black markets” some disparity between estimated numbers and confirmed cases should be expected, wrote the sociologist Ronald Weitzer in a 2011 *Journal of Criminal Law and Criminology*

paper. But “a huge disparity between the two should at least raise questions about the alleged scale of victimization.”

Unnecessary Legislation

Of all the myths and misinformation about sex trafficking in America, the most pernicious may be that our current laws are insufficient. Pushing his new Justice for Victims of Trafficking Act, which passed last May, Sen. John Cornyn (R-Texas) declared that it would “provide law enforcement with the tools” to hold human traffickers accountable. Another co-sponsor, Sen. Mark Kirk (R-Ill.), said the bill “gives police and prosecutors the tools they need to go after sex traffickers.” Such statements—and there are plenty more—imply that we currently lack tough anti-trafficking laws. Yet for at least 15 years, federal policy makers and agencies have been continually strengthening these laws and increasing funding for their enforcement.

Things really got going with the passage of the Trafficking Victims Protection Act (TVPA) in 2000, though before this federal agents could bring human trafficking charges under various statutes, including the Mann Act (passed in 1910 to prohibit transporting a minor across state lines for the purposes of engaging in prostitution), the Tariff Act (passed in 1930 to ban importing goods made with forced or indentured labor), and various laws related to peonage, indentured servitude, and slavery. But the TVPA, signed by President Bill Clinton in the waning days of his presidency, specifically established as federal crimes “forced labor,” “sex trafficking,” and “unlawful conduct with respect to documents in furtherance of trafficking.” It also created a national Office to Monitor and Combat Trafficking in Persons, and gave the feds authority to seize traffickers’ assets.

The TVPA’s 2003 reauthorization gave law enforcement the ability to use wiretapping to investigate sex trafficking and child sexual exploitation, increased the minimum and maximum sentencing requirements for a variety of sex offenses, and instituted a “two strikes, you’re out” rule

The Government Accountability Office calls the claim that there are 600,000 to 800,000 annual global trafficking victims “questionable” due to the rather astonishing fact that “the U.S. government’s estimate was developed by one person who did not document all his work.”

This year's Justice for Victims of Trafficking Act made *soliciting* paid sex from a minor a form of federal sex trafficking; established a Domestic Trafficking Victims' Fund into which anyone convicted of trafficking must pay \$5,000; and lowered the evidentiary standard for proving trafficking charges. The act also established that websites and publishers—from classified ad sites such as Craigslist

Another trend is adding trafficking-related offenses to those that get perps on sex-offender registries. Last January, Arkansas passed a bill requiring anyone convicted of trafficking in



persons or “patronizing a victim of human trafficking” to register as a sex offender. Increasing criminal penalties on patrons, or “johns,” has been hot in state legislatures, too.

In 21 states, “sex trafficking laws have been amended or originally enacted with the intent to decisively reach the action of buyers of sex,” according to the anti-trafficking nonprofit Shared Hope International. In 2014, Michigan changed soliciting someone under 18 for sex from a misdemeanor to a felony sex offense. Florida recently stipulated that people found guilty of soliciting prostitution (from someone of any age) must do 100 hours of community service and attend “john school,” where they will be educated on “the negative effects of prostitution and human trafficking.”

Expanding police/prosecutorial power to fight and profit from trafficking is also common. At least 21 states now allow police to use wiretapping in trafficking investigations. And many states allow asset forfeiture for those convicted of sex trafficking or prostitution. For instance, in Colorado, “every building or part of a building including the ground upon which it is situated and all fixtures and contents thereof, every vehicle, and any real property” are up for grabs if they’ve been used in conjunction with prostitution of any kind.

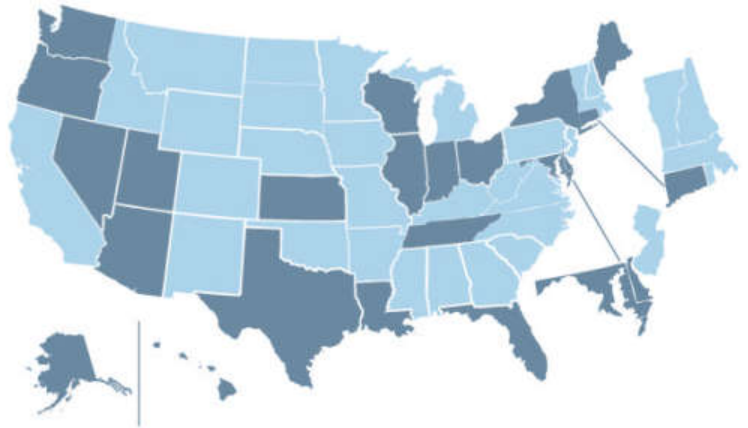
The final category of popular new state laws seems predominantly concerned with “raising awareness,” be it via classes for hotel employees, programs in school curricula, or signs posted in strip clubs. Dozens of states now require certain entities—from adult-entertainment businesses and job-placement firms to hospitals, rest stops, and airports—to post the National Human Trafficking Hotline number, or face penalties. In Georgia, failure to do so can result in fines of between \$500 and \$5,000.

Federal agencies are also in the trafficking publicity game. In July 2015, the DHS announced the expansion of “awareness efforts to major airports, truck stops, and motorist gas stations across the country,” where it will fund messages describing “the signs of human trafficking” on signs, video monitors, and shopping bags. The Equal Employment Opportunity Commission

21 states have laws allowing wiretapping in human trafficking investigations.

Wiretapping not allowed

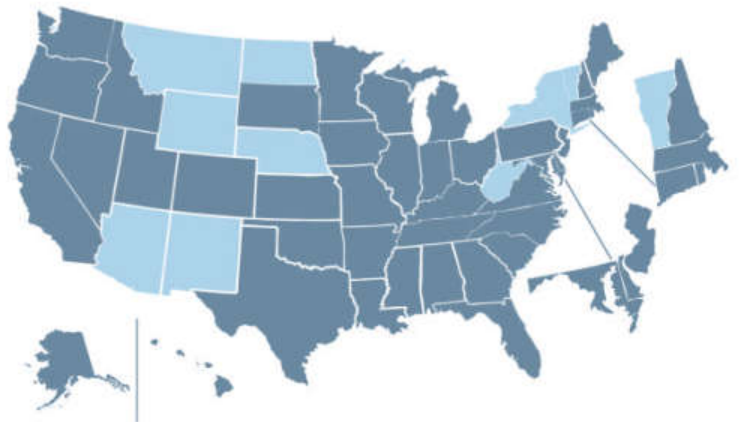
Wiretapping allowed



41 states allow law enforcement to seize the cash and property of anyone involved in human trafficking.

Asset forfeiture not allowed

Asset forfeiture allowed



conducted more than 250 human trafficking “outreach events” in 2013 alone.

Reframing Prostitution

If there’s no empirical evidence that domestic human trafficking is increasing, and the State Department says we already have adequate laws to go after traffickers, then what’s driving this current legislative frenzy?

One factor is opposition to prostitution, even between

consenting adults. Since the 1990s, a coalition of Christian and radical feminist activists has been working to redefine all prostitution as sex trafficking. While the Clinton administration was unsympathetic to their efforts, they found a friend in President George W. Bush. In a 2002 National Security Presidential Directive, the White House stated that prostitution was “inherently harmful and dehumanizing.” Hence the administration’s new rule: Non-governmental organizations receiving federal funds to fight human trafficking (or AIDS) must explicitly oppose prostitution.

“Prostitution is not the oldest profession, but the oldest form of oppression,” a State Department publication from 2004 reads. The agency stated that “the vast majority of women in prostitution don’t want to be there,” that “few activities are as brutal and damaging to people as prostitution,” and that “prostitution leaves women and children physically, mentally, emotionally, and spiritually devastated,” with damage that “can never be undone.”

“Since the early 2000s, anti-prostitution policies at the federal level have translated into increasingly aggressive state and local-level policing of sex workers and their customers,” wrote Kari Lerum, Kiesha McCurtis, Penelope Saunders, and Stephanie Wahab in a 2012 article for *Anti-Trafficking Review*. This conflation of trafficking and prostitution “has allowed for federal dollars to be used locally for anti-prostitution purposes,” the authors noted. “Anti-trafficking raids, such as Operation Cross Country held annually since 2006, have resulted in the arrest of many sex workers nationwide using federal anti-trafficking dollars.”

The goal of Operation Cross Country, according to the FBI’s website, is “to recover victims of child sex trafficking.” In 2014, more than a dozen cities took part. Knoxville, Tennessee, to cite one participant, uncovered zero underage victims of sex trafficking, but it did arrest eight women for prostitution, four women for promoting prostitution, two women for human trafficking, and four men for solici-

tation. In Newark, New Jersey, one 14-year-old victim was identified and 45 people were arrested for prostitution or pimping. Richmond, Virginia, found no child victims but charged 26 people with prostitution and two with pimping. In Atlanta, dozens were arrested for prostitution, loitering, soliciting, and drug possession.

Phoenix officials announced the most victims recovered: five minors and 42 adults. But dig beyond the press release and you’ll see the adult “victims” included women willingly working in prostitution. Officers posing as clients answered these women’s online ads and then apprehended them. One 20-year-old “victim” had her arm broken by the cops when she tried to flee. A 16-year-old victim was booked on prostitution charges when she refused to let officers contact her parents. After failing to secure emergency shelter for two adult victims who had no money and no identification, police returned them to the motel where they’d been apprehended “so they could try and arrange funds to get back” home.

Institutionalization of a Moral Crusade

In a 2012 paper published in *Politics & Society*, Ronald Weitzer suggested that the 1990s anti-prostitution crusade has become fully “institutionalized” in the 21st century. “Institutionalization by the state may be limited or extensive—ranging from consultation with activists, inclusion of leaders in the policy process, material support for crusade organizations, official endorsement of crusade ideology, resource mobilization, and the creation of legislation and new agencies to address the problem,” Weitzer wrote. Sound familiar?

“Some moral crusades are so successful

“Prostitution is not the oldest profession, but the oldest form of oppression,” a State Department publication from 2004 reads. “The vast majority of women in prostitution don’t want to be there.”

that they see their ideology fully incorporated in government policy and vigorous efforts by state agencies to combat the problem on their own,” he noted. In other words, “the movement’s central goals become a project of the government.”

It’s hard to think of a better representative of this institutionalization than the Polaris Project, one of America’s biggest anti-trafficking groups. Founded by a man who now runs the website *Everyday Feminism* and a woman who now works for the federal government, Polaris has drafted multi-pronged model legislation for the taking. Compare Polaris’ recommendations with state trafficking laws, and you’ll find near verbatim language in some, and shared assumptions and goals in almost all.

How did Polaris gain such influence? One way is through state “report cards.” Advertised as a measure of states’ commitment to fighting human trafficking, it’s basically a measure of how closely their laws hew to the Polaris policy wishlist. Among the must-haves: a law requiring the display of the national human trafficking hotline number, which Polaris runs with funding from Health and Human Services. States that fail to enact all of the Polaris-endorsed policies wind up with bad grades, which the organization then publicizes extensively.

Another driver of state trafficking policies is the Uniform Law Commission (ULC), a nonpartisan organization that drafts model state legislation in a variety of areas. In 2010, ULC was asked by the American Bar Association to prepare a plan for tackling human trafficking. The result was drafted in collaboration with Polaris, Shared Hope International, the National Association of Attorneys General, and the U.S. State Department, then approved by the bar association in 2013.

In the first half of 2015, two states enacted laws based on ULC’s model legislation and four others introduced them. Four states enacted ULC-based trafficking laws in 2014 with 10 more attempting to. Among the model legislation’s main tenets are court-ordered forfeiture of real and personal property for traffickers, providing “immunity to minors who are human trafficking vic-

tims and commit prostitution or nonviolent offenses,” and imposing “felony-level punishment when the defendant offers anything of value to engage in commercial sexual activity.”

That last bit is part of what’s known as the “end-demand” strategy, or the “Nordic model,” which focuses heavier penalties on sex buyers than sex sellers. Popularized by Nordic feminists, it’s since become the law of the land in Canada and is rapidly influencing American policy, with many religious-based anti-trafficking groups also adopting its rallying cry. As a result, cities and states around the country have begun increasing penalties for prostitution clients and rebranding them as sexual predators. In Seattle, for instance, the crime of “patronizing a prostitute” was recently rechristened “sexual exploitation.”

The theory behind “end demand” is that if only we arrest enough patrons or make the punishments for them severe enough, people will stop trying to purchase sex. Voilà! No more prostitution, no more sex trafficking. If that sounds familiar, perhaps you’re old enough to remember the ’80s, when a similar approach was supposed to bring down the drug trade.

“Ending the demand for drugs is how, in the end, we will win,” President Ronald Reagan declared in 1988. Indeed, it was how we were *already* winning: “The tide of the battle has turned, and we’re beginning to win the crusade for a drug-free America,” Reagan claimed.

In reality, the number of illicit drug users in America has only risen since then, despite the billions of dollars spent and hundreds of thousands of people locked away. In 1990, for instance, 7.1 percent of Americans had used some sort of illegal drug in the past month, according to the National Household Survey on Drug Abuse. By 2002 it had risen to 8.3 percent, and by 2013 to 9.4 percent.

The utter failure to “end demand” for drugs hasn’t dented optimism that we can accomplish the trick with prostitution. During the “National Day of John Arrests” each year, police pose as sex workers online and then arrest would-be clients. Each year, hundreds of men are booked in these stings and charged with offenses ranging from public indecency and solicitation to pimping and sex trafficking. If these anti-trafficking efforts sound a lot like old vice policing, that’s because the tactics, and results, are nearly identical.

In a study released last year by Shared Hope International and Arizona State University, researchers examined end-demand efforts in four metro areas over a four-month period. Between 50 and 60 percent of these efforts involved

police decoys pretending to be teens, and no actual victims. A typical tactic is for police to post an ad pretending to be a young adult sex worker, and once a man agrees to meet, the “girl” indicates that she’s actually only 16 or 17.

Shared Hope is candid about the fact that most of the men soliciting sex here are not pedophiles and not necessarily seeking out someone underage. But “distinguishing between demand for commercial sex acts with an adult and demand for commercial sex acts with a minor is often an artificial construct,” its report asserted. So to save the children, we need to prosecute men who have no demonstrated interest in children, because in the future they may seek sex with adults who could actually turn out to be old-looking teens—got that?

“One shortcoming of the reverse sting approach is that no live victims are rescued from trafficking,” Shared Hope admitted. “But it does take intended perpetrators of child sex trafficking off the Internet and off the streets.”

Bipartisan Paranoia

A federal war on prostitution doesn’t play well with large segments of Americans. Fighting *human trafficking*, on the other hand, is a feel-good cause. At a 2012 Clinton Global Initiative (CGI) speech, President Barack Obama insisted that we must call human trafficking “by its true name—modern slavery.” And what kind of monster would be against ending slavery? Which brings us to another factor driving all this trafficking action: It makes politicians look good.

At a time when Republicans and Democrats can barely agree on anything, human trafficking bills have attracted huge bipartisan support. Here is an area where enterprising legislators can attach their names to something likely to pass. And if it doesn’t pass, for whatever reason, it’s ripe for demagoguery: “*My opponent voted against a bill to fight modern slavery!*” Tough-on-crime policies, particularly tough-on-drugs policies, used this tactic for decades, until mass incarceration finally lost its luster.

Undoubtedly, many lawmakers do legitimately want to help trafficking victims and hold bad guys accountable; political point-scoring is just a happy side effect. But a less happy side effect is a slew of bad laws, violated rights, and squandered money. The federal government has given away scores of millions in grant dollars for this quixotic crusade.

The resources spent on prostitution stings and public awareness campaigns are resources diverted from mundane but more effective strategies for helping at-risk youth, such as adding more beds at emergency shelters. The State

Department’s latest *Trafficking in Persons* report notes that “shelter and housing for all trafficking victims, especially male and labor trafficking victims, continue to be insufficient.” Advocates routinely say the biggest barrier to escape for many trafficking victims is simply a lack of places to go.

“Studies focused on New York City consistently report that homeless youth often trade sex for a place to stay each night because of the absence of available shelter beds,” noted the Urban Institute in a report last year. “These figures are even more striking for LGBTQ youth...According to a survey of nearly 1,000 homeless youth in New York City, young men were three times more likely than young women to have traded sex for a place to stay, and LGBTQ youth were seven times more likely than heterosexual youth to have done so. Transgender youth in New York City have been found eight times more likely than non-transgender youth to trade sex for a safe place to stay.”

What’s more, many of the policies in place to fight trafficking actively work against their own stated mission. The criminalization of prostitution keeps sex workers from reporting abuse and keeps clients from coming forward if they suspect someone is being trafficked. Victims themselves are afraid to go to police for fear they’ll be arrested for prostitution—and indeed, they often are.

In 2012, 579 minors were reported to the federal government as having been arrested for prostitution and commercialized vice. Prosecutors say they need this as a “bargaining chip” to make the victims testify against their perpetrators. We’re just using state violence and the threat of incarceration against children in order to save them!

Another misguided government target is the classified advertising website Backpage, home to many an “escort” ad. Lawmakers accuse the site of “profiting off of child exploitation,” even though only a miniscule percentage of Backpage ads—which anyone can put up—are posted by traffickers rather than adult sex workers. Both legislators and anti-trafficking groups have long been intent on shutting the site down. Yet “street-based sex workers, across studies, face

much higher rates of violence than indoor sex workers,” says Serpent Libertine, a Sex Workers Outreach Project (SWOP)-Chicago board member. “It’s hard to understand how eliminating a low-barrier way to work indoors would promote safety.”

Vera Lamarr, also with SWOP-Chicago, pointed out that Backpage cooperates with law enforcement in the U.S. more than many other sites do. “It’s hard to understand the desire to take down a website that voluntarily supports efforts against trafficking and willingly cooperates with law enforcement,” Lamarr says. “If Backpage closes, their user base could easily migrate to a less cooperative site” or be forced back out on the streets, where traffickers don’t leave digital records.

But at least we’re getting the really bad guys, right? That’s also up for debate. Peruse trafficking arrest records and you’ll find many folks like Amber Batt, an Alaska woman who faces 10 to 25 years in federal prison (plus a lifetime on the sex-offender registry) for running an escort service featuring adult women who freely elected to work there. Or Julie Haner, a 19-year-old Oregon sex worker who was charged with trafficking after taking her 17-year-old friend with her to meet clients. Or Aimee Hart, 42, who served seven months in prison and faces 15 years on the sex-offender registry for driving her adult friend to a prostitution job. Or Hortencia Medeles-Arquello, a 71-year-old Houston bar owner arrested as the leader of a “sex trafficking conspiracy” because she allowed prostitution upstairs.

There’s Trenton McLemore, 29, who faces federal sex trafficking charges for “facilitating” the sex work of his 16-year-old girlfriend by pur-

chasing the girl a cellphone and sometimes texting clients for her. He faces a mandatory minimum of 10 years and possible life in prison, thanks to a joint effort of Irving, Texas, police; Homeland Security; and U.S. Immigration and Customs Enforcement. And Alfonso Kee Peterson, 28, arrested in July for telling a 17-year-old on Facebook that he could help her earn a lot of money from prostitution. The “teen” turned out to be a police decoy. Despite the absence of any real victim or any activity beyond speech, Peterson was charged with one felony count of human trafficking of a minor, one felony count of pandering, and one felony count of attempted pimping; he faces up to 12 years in prison. This important sting apparently warranted the work of several local police departments, the California Highway Patrol, and the FBI.

Even if we grant that some of this activity is unsavory, is it really the sort of behavior that warrants lengthy prison sentences and attention from federal agents? Since when is what adults—or even teenagers—willingly do with their genitalia a matter of homeland security? Is this really what President Obama had in mind at the CGI conference when he compared anti-trafficking laws to the Emancipation Proclamation?

“To be sure, linking trafficking and slavery could, in theory, surface important similarities between political economies of chattel slavery (largely) of the past, and modern-day trafficking,” the American University law professor Janie Chuang wrote in a paper published in the *American Journal of International Law* last year. “Drawing out such nuanced comparisons is not, however, the current trajectory of slavery creep. Instead, this version promotes an understanding of trafficking as a problem created and sustained by individual deviant actors, and thus best addressed through aggressive crime control measures.”

For a fraction of the money spent on these measures, state governments or private foundations could fund more beds at emergency shelters. The resources that churches,

The Justice for Victims of Trafficking Act established that websites and publishers—from classified ad sites such as Craigslist to social media services like Twitter and Reddit—may be charged with sex trafficking if any victim is found to have advertised there.

charities, and radical feminists use trying to convince people that all sex workers are victims (and their clients predators) could go toward helping that minority of sex workers who *do* feel trapped in prostitution with job placement or getting an education. For the vast majority of vulnerable sex workers, the greatest barriers to exit aren't ankle-cuffs, isolation, and shadowy kidnappers with guns, but a lack of money, transportation, identification, or other practical things. Is helping with this stuff not sexy enough? As it stands, many of those "rescued" by police or abolitionist groups find that their self-appointed saviors can't actually offer them housing, food, a job, or anything else of urgent value in starting a life outside the sex trade. Awareness doesn't pay the bills.

Kamylla's story typifies this rescue paradox. A Texas mother who had fallen on hard times after an injury ended her construction career, she started working in prostitution last year. One day, producers from the A&E television series *8 Minutes* contacted her, having seen her ad on Backpage. Though *8 Minutes* was marketed as a reality show where a rogue pastor found and "saved" sex trafficking victims in real time, Kamylla and others (who were selling sexual services willingly, even if their situation wasn't optimal) actually talked with producers several times beforehand. The show promised to help with her overdue rent and finding a job, she says. After filming, they gave her \$150 and told her they'd be in touch soon about further assistance.

They never called. When Kamylla followed up, the producers referred her to the same unhelpful social services she'd already tried on her own. Eventually Kamylla returned to Backpage, posting an ad using the same phone number that the producers had used to contact her. The first call she received was from an undercover cop, who arranged to meet her and another sex worker at a motel. Once the women agreed to oral sex for money, "he opened the door and nine police officers came inside the room," she says. Both women were taken to jail and booked on prostitution charges.

In a world with no gray areas—one where traffickers are always evil predators and victims always utterly helpless, where sex workers are never ambivalently engaged with their work, and the bright line between teendom and adulthood is always apparent and meaningful—in this world, the raid-and-rescue model of addressing sex trafficking may make some sense. You don't give a girl chained to a bed a condom and call it a day.

But in the world as it exists, sometimes a 17-year-old runaway chooses prostitution because it's better than liv-

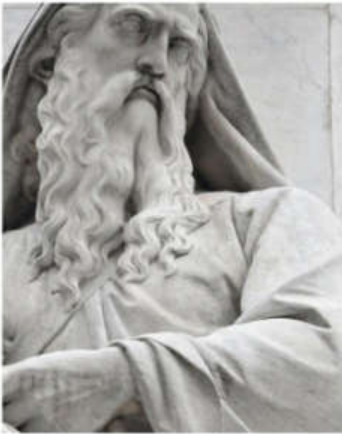
ing in an abusive foster home. Sometimes a sex worker gives all her money to a man because she loves him or thinks she needs him, or that he needs her. Sometimes a struggling mother doesn't love the sex trade, but finds it the best option to feed her kids. Sometimes an immigrant would rather give hand jobs to strangers than face whatever drove her to leave her own country. Harm reduction strategies like handing out condoms in popular prostitution areas, offering STD tests, or even just facilitating online advertising (rather than street work) could prove lifesaving to these women.

Yet when it comes to the way we talk about commercial sex, you have to be a victim or a predator. We've created a narrative with no room for nuance. We traffic not in facts but in melodrama. In TV broadcasts, campus panels, and congressional hearings, the most lurid and sensational stories are held up as representative. Legislators assure us that their intent is noble and pure.

But remember: Tough-on-drugs legislation was never crafted or advertised as a means to send poor people to prison for life over a few grams of weed. It was a way to crack down on drug kingpins, violent gang leaders, evil crack fiends, and all those who would lure innocent children into addiction, doom, and death. Yet in mandating more police attention for drug crimes, giving law enforcement new technological tools and military gear with which to fight it, and adding ever-stricter prison sentences and punishments for drug offenders, we unleashed a corrupt, authoritarian, biased, and fiscally untenable mess on American cities without any success in decreasing drug rates or the violence and danger surrounding an activity that human beings stubbornly refuse to give up.

Unless we can learn the lessons of our past failed crusades, the war on sex trafficking could result in every bit as much misery as its panicky predecessors. Here's hoping it won't take us another four decades to realize that this prohibition doesn't work either. ■

Elizabeth Nolan Brown (elizabeth.brown@reason.com) is a staff editor at **reason**.



From thousands of years ago, the prophet Isaiah is quoted, “prepare ye the way of the lord, make straight in the desert a highway for our god.”

That clarion call is as appropriate today as in the days of Isaiah.

The human race of this 21ST century has yet to make straight, a highway for the creator in its desert of transgressions and iniquities still being expressed by earth’s populations everywhere.

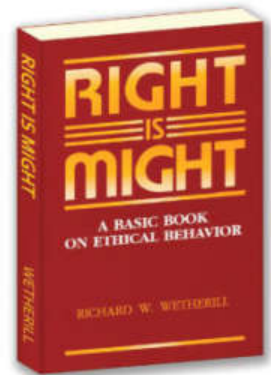
And what is blocking this straight highway? Just persons’ refusals to surrender their personal thoughts and to accept the thoughts of the creator in the words of a natural law identified by Richard Wetherill decades ago. He called it the Law of Right Action, requiring people to be rational, honest, and morally right to get right results.

However, newscasts increasingly warn of terrorist attacks coming here partly caused by radicalized citizens and unprotected borders.

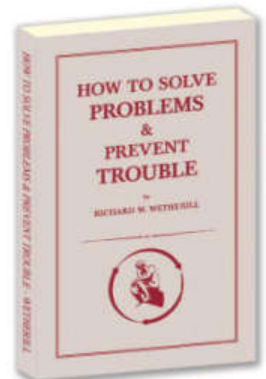
But who has answered cries from the wilderness since the days of Isaiah and dropped their transgressions and iniquities? Is the public going to heed the change of thinking from their personal thoughts to the creator’s thoughts to do what is rational and honest, to become morally right?

That is the creator’s solution for humanity’s problems, but there are millions of people seemingly unwilling to do it. Will you?

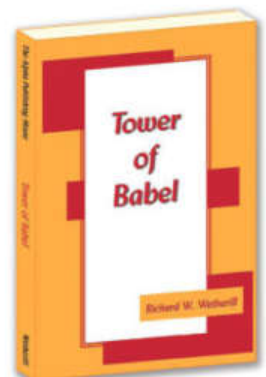
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Junk Science and Campus Rape

A new inquiry casts serious doubt on the most influential study on collegiate sexual assault.

Robby Soarve

DAVID LISAK is hardly a household name. But over the last decade, he has become the single most important expert on a topic of increasing national concern—sexual violence on college campuses. Lisak’s authority on the subject is well-established: The White House cites him in briefing papers, anti-rape activists promote his work in movies and books, and university administrators invite him to give lectures and sit on panels. Even those who are skeptical about the existence of a massive new campus rape crisis have largely declined to dispute Lisak’s most significant finding: that the majority of campus rapists are serial offenders who commit routine violence until and unless they are apprehended.

Lisak’s views have dominated the conversation about campus rape ever since the release of his 2002 study, “Repeat Rape and Multiple Offending Among Undetected Rapists.” He believes campus rape adjudicators should view each and every accusation “as an opportunity to identify a serial rapist,” since the accused student is likely to have raped multiple women. He has encouraged colleges to do more to root out serial rapists and banish them from campus. Efforts to reduce campus rape that focus on education and awareness are unlikely to succeed on their own, according to his line of thinking. These men can’t be taught not to rape—they are undetected



career criminals, and their very existence justifies the federal government’s meddlesome intervention into students’ sex lives.

But unquestioned deference to Lisak may have been a serious tactical and intellectual mistake. Why? An investigation into Lisak’s signature work casts serious doubt on the reliability of his serial predator theory. The 2002 study routinely cited as foundational evidence in collegiate sexual assault discussions *isn’t even about campus rape*—and that’s just one of its many flaws.

Washington State University Week Without Violence, October 2014. (Alex Milan Tracy/Sipa USA/Newscom)



For years, Lisak has exaggerated the scientific support for his theory while selling himself and his policy solutions to advocates, administrators, and politicians. Given that his science is much less convincing than it seems, perhaps the policies based on it also deserve a more skeptical look.

Dubious Data

Public outrage over a purported epidemic of sexual violence on American college campuses may have reached a high water mark on January 22, 2014. That's when the

Obama administration released a 34-page report establishing a White House Task Force to Protect Students from Sexual Assault.

The report included several of the erroneous statistics that have inspired mass hysteria over the prevalence of rape on campuses. "College students are particularly vulnerable: 1 in 5 women has been sexually assaulted while in college," it asserts on page 1.

These are astonishing claims. Also astonishing-

The 2002 study routinely cited as foundational evidence in collegiate sexual assault discussions *isn't even about campus rape*—and that's just one of its many flaws.

ing is how quickly they collapse when scrutinized by fact checkers. Women attending college aren't "particularly vulnerable." The truth is precisely the opposite: Women attending college are *less* likely to be raped, according to the Bureau of Justice Statistics—an unsurprising finding, since wealthier, better-educated people typically experience less violence than the socioeconomically disadvantaged. The 1-in-5 statistic holds up only slightly better; the study that produced that number had serious limitations. When surveyed, large percentages of college students will admit they've endured nonconsensual touching, but they do not see themselves as victims of rape.

That these claims overstate the extent of the problem is something that a growing and disparate chorus of voices now seems to recognize. In February 2015, the education reporter for the left-leaning politics/policy website *Vox* admitted that the 1-in-5 statistic was "probably inaccurate"; just five months prior, *Vox* Editor in Chief Ezra Klein had argued that the 20 percent figure was why he was supporting what he called a "terrible law" mandating affirmative consent for collegiate couples daring to touch each other. Nearly a year after the release of the White House memo, *Inside Higher Ed* ran a story skeptical about the statistic, and *The Washington Post's* fact-checking operation asserted flatly that the White House claims had gone too far.

Yet left unscrutinized until now was an equally disturbing "fact" cited later in the White House memo. "Notably, campus assailants are often serial offenders," it stated. "One study found that of the men who admitted to committing rape or attempted rape, some 63% said they committed an average of six rapes each."

That study was authored by Lisak, a former

professor of psychology at the University of Massachusetts Boston. Lisak knew from his previous work on sexual assault that incarcerated rapists were often repeat offenders, and wondered whether "undetected rapists"—i.e., people who were never caught—would share this characteristic. His study interviewed 1,882 subjects at UMass Boston, 120 of whom he determined to be rapists who had never been caught. Seventy-six of those 120 were deemed to have committed multiple assaults, which led Lisak to conclude that a majority of undetected predators, just like their incarcerated brethren, were serial rapists.

"Those serial offenders were prolific," Lisak said in an October 28, 2013, interview with *Al Jazeera*. "The average number of rapes for each one of those serial offenders was six."

But were they in fact "campus assailants," as the White House claimed and based policy recommendations on? The researchers didn't even ask the participants—who ranged in age between 18 and 71, averaging 26.5, with more than 20 percent older than 30—whether they were students. They just set up booths at a commuter college and asked willing men to answer a long questionnaire for some pocket change (between \$3 and \$5). And none of the questions—not one—asked participants specifically about violence they had committed against other students, or on campuses.

Occasionally, Lisak has acknowledged his study's limitations, albeit without emphasizing that the participants were never asked about their enrollment status. "Students are a little bit older," he told an audience at Emory University during an April 2013 presentation. "They are working mainly, half-time, full-time some of them. Kind of a cross section of working-class Boston, but still, young people, in college."

But in the *Al Jazeera* interview, Lisak also asserted that the repeat offenders have "perfected ways of identifying who on campus, for example, are most vulnerable," as if he had gleaned personal insight into the minds of serial campus rapists in the course of extensive back-and-forths

with the subjects. That impression, it turns out, is highly misleading.

Linda LeFauve, associate vice president for planning and institutional research at Davidson College, dug into the study for a July article at **reason.com** and made a startling discovery: The underlying research wasn't even conducted by Lisak. Rather, he had appropriated the data from four different surveys administered by his graduate students during the 1990s. The surveys, which are not specified in the 2002 study, were derived from his students' dissertations and master's theses. During a phone interview with LeFauve, Lisak was unable to recall which surveys had wound up in the study. Part-time Harvard University instructor Dr. James Hopper, a former student of Lisak's whose research was used in the study, was able to reconstruct the sources of much of the data.

Significantly, the surveys were not specifically about campus rape; they were about more general acts of violence that men did or did not commit over the course of their lives. Participants who answered "yes" to certain questions (such as: "Have you ever had oral sex with an adult when they didn't want to because you used or threatened to use physical force if they didn't cooperate?") were labeled rapists for the purposes of the study, and participants who had committed multiple instances of rape under this definition were labeled serial predators.

Lisak acknowledged during the course of a telephone interview with LeFauve that the surveys weren't primarily about campus violence. They "may have been about child abuse history or relationships with parents," he said. He also supposed that many examples of repeat rape in the study were domestic violence, i.e., not the kind of serial predation one would normally expect to find on a college campus.

Lisak defended his prior claims that he had interviewed most of the rapists in the 2002 study. When LeFauve pressed him to explain how this was possible, given that the studies were anonymous and had been coordinated by his students, he ended the call. He has not responded to subsequent requests for interviews.

Hopper explained that it would have been possible for researchers to interview some, though by no means a majority, of the participants, since one of the four surveys provided for respondents to be interviewed at a later date. But these subsequent interviews were validation exercises designed to ensure that respondents had given truthful answers during the initial survey, not probing examinations of the inner minds of serial predators.

Date Rapists or Serial Rapists?

Prior to Lisak, campus rapists were often branded "date rapists." The thinking was that students who committed sexual violence against other students were typically single-instance offenders who had gotten carried away due to a variety of circumstances: heavy drinking, lack of understanding about sexual consent definitions, and so on. Date rape is no less serious than serial predator rape, but the tools needed to address a crisis consisting predominantly of the first kind of assault are different than the tools needed to prevent the second kind. Teaching students to drink responsibly, for instance, might mitigate date rape, but is an inadequate tactic for confronting a fringe element of career sociopaths.

In the 13 years since "Repeat Rape and Multiple Offending Among Undetected Rapists" was published, Lisak has become a minor celebrity in the world of anti-rape activism. His serial predator theory is the dominant lens through which the issue is examined, and his policy preferences are given center stage.

But according to feminist professor Mary Koss, who specializes in sexual assault at the University of Arizona's College of Public Health, the reliance on Lisak's theory has been a grave mistake. "It's one of the most egregious examples of a policy with an inadequate scientific basis that lives on because it offers a simplistic solution," Koss tells **reason**.

Koss believes that Lisak himself is directly responsible for elevating his faulty science to the level of popular acceptance and governmental influence. "It didn't happen by accident," she says. "He played more than a role. He described his information as being relevant to serial rape from day one."

Lisak's serial predator theory has been directly contradicted by a new paper Koss co-authored, titled "Trajectory Analysis of the Campus Serial Rapist Assumption." Based on two surveys of the adolescent sexual histories of a combined 1,645 male college students, the authors found that 177 (11 percent) had committed at least one rape between age 14 and the end of their college careers, of which a whopping 75 percent "only perpetrated rape during 1 academic year."

“It’s one of the most egregious examples of a policy with an inadequate scientific basis that lives on because it offers a simplistic solution.”

“Although a small group of men perpetrated rape across multiple college years,” the paper concludes, “they constituted a significant minority of those who committed college rape and did not compose the group at highest risk of perpetrating rape when entering college.”

If Lisak is wrong, and most campus rapists are *not* serial predators, what should be done about collegiate sexual assault? Koss has some ideas. Many of the young men who commit rape in college can be taught better behavior, she says. They also might be well-suited to a different, less Orwellian campus adjudication process than what has become increasingly common across the country.

Koss would like to see more rape disputes settled via “restorative justice” involving discussion between the two sides. The goal is not necessarily to punish a rapist, but to allow both the victim and the accused to achieve closure. Universities—which possess significant resources to assist students who are dealing with trauma but are often unequal to the task of fairly adjudicating sex crimes—are an ideal vehicle for restorative justice in cases where victims are looking for validation and assistance instead of punitive justice, she says.

“In my work with the restorative processes, there are a couple of preconditions,” said Koss. “One precondition is that due process is observed. A second precondition is that victims’ rights are observed. A third thing is that participation is voluntary by both people.”

Those guarantees might not fully allay due process concerns, given how poorly university administrators have handled sexual assault allegations in the past. But voluntary university-sponsored dispute-resolution would still be a vast improvement over the current regime,

which requires that universities play judge, prosecutor, and jury at mandatory, farcical extrajudicial proceedings.

There is a big obstacle standing in the way of this approach, however: the federal government. In the last few years, the Department of Education’s Office for Civil Rights has consistently told universities that federal law—Title IX of the Higher Education Act, specifically—requires them to adjudicate rape disputes. Koss’ solution would also no doubt be opposed by many victims’ advocates, who see expulsion as the only just outcome when a student is even accused of rape.

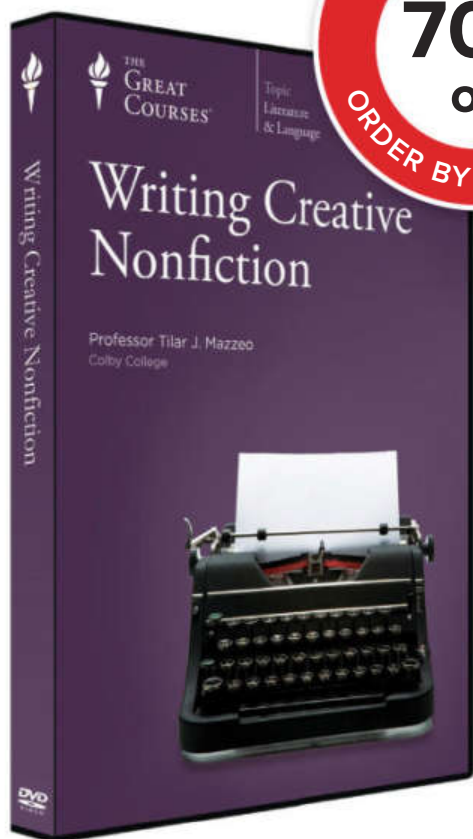
And that’s why it matters so much whether Lisak’s theory is accurate or misleading. If most student rapists are irredeemable villains, it’s easy to justify draconian efforts to hunt them down and expel them from campus. But if most student rapists are one-off offenders—ignorant about relationships, capable of learning from their mistakes—school might actually be the right place for them.

“These are educational institutions, so at our foundation we have some faith that people can change over time,” Koss said.

The validity of Lisak’s work and influence is very much an open question within the community of experts who have studied sexual assault. But it remains unscrutinized by policy makers who have been all too eager to implement Lisak’s suggestions and media figures who have cheered them for doing so. The blunt fact remains that the canonical study on campus sexual violence comprised four 1990s surveys of men between the ages of 18 and 71—at a commuter school with no campus housing—who were never asked specifically about student-on-student rape and who may not even have been students themselves.

The ensuing serial predator theory casts a long shadow over the campus rape issue, but neither victims nor the accused are well-served by the sacrosanct status it has achieved. ■

Robby Soave (robby.soave@reason.com) is a staff editor at reason.



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A Libertarian-Gay Divorce?

Government-sponsored discrimination is nearly eradicated. So what's left to work together on?

Scott Shackford

JUST ONE DAY before the Supreme Court ruled that states must recognize same-sex marriages, Cato Institute Executive Vice President David Boaz took to the website of *The Advocate*, a venerable national gay publication, to remind readers about the long history of libertarian support for gay rights. The Libertarian Party, Boaz noted, has called for decriminalizing gay behavior and treating gay people equally under the law since the organization was founded in the early 1970s.



Many other libertarian organizations (including **reason**) have been taking such positions for just as long or even longer. And since then, the United States has seen the abolition of sodomy laws, the end of officially sanctioned government discrimination against gay employees, and now—with the *Obergefell v. Hodges* decision in June—the end of government non-recognition of same-sex marriage.

So: Is that it, then? Is the gay movement ready to declare victory and go home?

Don't bet on it. Now that government discrimination is largely tamed, gay activists are going after private behavior, using the government as a bludgeon. After a long alliance with libertarians, the two camps could be settling into a new series of conflicts.

Libertarians and gay activists were aligned in the pursuit of ending government mistreatment, but libertarians draw a bright line between government behavior and private behavior, arguing that the removal of state force is the essential precondition for private tolerance. Many gay activists believe that government power is a critical tool for eliminating private misdeeds. What many activists see as righteous justice, libertarians see as inappropriate, heavy-handed coercion.

Now that gay marriage is a settled matter, it's worth taking an inventory of political issues frequently raised within the LGBT activist community to see where the two groups' values line up and where they conflict.

Job Discrimination

Historically, employment discrimination, not marriage recognition, was *the* big political cause for gay leaders. It would be easier, the logic went, to convince Americans not to discriminate against gays than to convince them to let gays marry.

That isn't how things worked out. The Employment Non-Discrimination Act (ENDA), introduced and reintroduced in Congress repeatedly over the last 20 years, has never passed; the closest it came was when it passed the Senate in 2013 by a vote of 64-32 but was not considered by the House. Meanwhile, gay marriage went from a pipe dream 20 years ago to the law of the land.

Workplace discrimination is clearly where the gay movement wants to pivot next. There is no federal protection against private anti-gay discrimination, and many states don't have laws against it either, so in 18 states gay citizens can get fired by their bosses for getting married. "A gay employee could be congratulated by a coworker for his upcoming nuptials and the next day find a pink slip on his

desk," Robert P. Jones wrote in *The Atlantic* this June.

But the workplace push is largely based on the theoretical *possibility*—and a much earlier history—of discrimination: The fear is that unless a law explicitly prohibits an unwanted thing from happening, it will happen. Yet there's been a huge culture shift these past two decades in support of letting gay people live their lives as they choose. Big corporations with products to sell celebrated gay pride in June, openly marketing themselves to gay customers and their allies. So where is the evidence that anti-gay employment discrimination in 2015 is a widespread phenomenon requiring urgent government intervention?

Solid numbers aren't easy to come by. In 2007, the Williams Institute at University of California, Los Angeles, which researches sexual orientation and gender identity issues, aggregated a bunch of studies starting from the 1990s that rely on self-reported claims of workplace discrimination. The numbers vary widely, from 16 percent to 44 percent of gay people claiming everything from being denied jobs and promotions, to abuse or harassment, to unequal pay. But the institute itself warns about data based on self-evaluation.

The Williams report also looked at how many complaints have been received in states with laws against sexual-orientation discrimination. California, the biggest such state at the time, had all of 154 complaints throughout its history until 2002, compared to 8,232 complaints of gender discrimination. (Granted, the gay discrimination number would naturally be smaller because of the smaller population of gay and lesbian citizens.)

A 2011 study by a Harvard researcher used fake job applications, with some résumés boasting similar skills and experience, but differing by indicating involvement in a college gay group. It found a gap of up to eight percentage points in callback responses to candidates who indicated involvement in a gay organization when compared to the control group, depending on what state they were applying in.

What none of this social science can determine is a threshold over which it should be con-

Historically, employment discrimination, not marriage recognition, was *the* big political cause for gay leaders.

sidered justified for the government to intervene in private employment practices. In general, libertarians and gay leaders have been united against anti-gay discrimination by government employers, such as the military. As the government answers to (and takes tax dollars from) all citizens, including the gay ones, the government should logically and ethically treat people the same regardless of sexual orientation.

But in the private sector, there should be something more than an ever-shrinking number of unpopular hiring decisions before asking Leviathan to step in. It used to be that the biggest enemy of gay people in the workplace was the federal government itself, which in past years actively purged gay employees from its rolls (and encouraged private contractors to do the same). As culture shifts, it would be more appropriate to use social media campaigns, boycotts, bad publicity, and other forms of influence to bring about changes in private sector hiring practices.

Religious Freedom

Another major divide between libertarians and many gay activists—with the American Civil Liberties Union (ACLU) and state-level civil rights commissions coming down on the latter side—involves religious business owners who don't want to provide their goods and services for gay weddings. We're now seeing additional concerns that religious colleges could be punished for not accommodating gay couples, and some have floated the idea that churches that pursue such policies shouldn't have nonprofit status anymore.

The freedom to choose with whom to associate is a fundamental human right. The ability to

engage freely in commerce is another one. As such, libertarians have always defended the ability of religious businesses and individuals to say “no thanks” to potential customers.

This is not just about faith. Religion happens to be the framework for this debate because the people who want to discriminate against gay customers are doing so while citing their religious beliefs. But *any* regulation that inhibits individuals' right to choose with whom they trade or do business needs to be treated as suspect. To justify restrictions on this freedom, the government has to prove that inaction would produce a significant amount of harm.

That's obviously not the case when it comes to the provision of marketplace goods. Nobody has presented a credible argument that gay couples are unable to buy wedding cakes or hire photographers. There is no actual “harm”—at worst, just inconvenience and insult.

When Mark Silverstein, ACLU legal director in Colorado, helped a gay couple sue a bakery that had declined to provide them a wedding cake, he asked: “If a business owner is allowed to simply cite personal beliefs as a basis for turning away same-sex couples, then what stops a doctor from denying medical care to the child of same-sex parents or a police officer from refusing to defend a church or a synagogue?” The proper response is that cops are prevented from discriminating by law, and doctors by professional oath. But beyond that, we have little reason to believe that most people *want* to discriminate against gay, lesbian, or transgender customers. The burden created by those who do is remarkably small and can be remedied without government intervention.

There was a time—and it was not so long ago—when many businesses and individuals who supported gay rights felt the need to contribute to the cause as secretly as possible so as to avoid adverse reactions from their straight customers. Flipping the switch on who gets punished for their beliefs, especially when the penalties are administered by the always-domineering state, is not justice.

With transgender issues, by contrast, libertarians and LGBT activists are closer to being on the same page.

Transgender Rights

With transgender issues, by contrast, libertarians and LGBT activists are closer to being on the same page. Transgender citizens—those who identify as a gender different than the sex they were assigned at birth—are seen by both groups as having the same right as everybody else to live their lives as they please without unnecessary government interference.

There's a lot we still don't know about how sex is expressed biologically, genetically, and psychologically. As a legal and ethical matter, though, it generally shouldn't matter *why* people identify as transgender.

So what is the government's role in recognizing individual gender expression? Ideally any official documentation, such as a driver's license, that lists a person's sex, should match the identity by which a person lives, as much as that is feasible. Probably of greater importance: In any situation where the government forces transgender folks to remain in the state's custody for a long period of time, from prison to public schools, it should accommodate their needs by respecting how they present themselves whenever separating citizens on the basis of sex in everything from bathrooms to prison cells. People such as former Arkansas Gov. Mike Huckabee may tell jokes implying that transgender Americans have some sort of erotic advantage in locker-room situations, but within detention it is the transgender citizen who is more likely to be sexually assaulted.

Transgender people have recently seen big inroads in acceptance and accommodation, both culturally and legally. In June, a transgender activist heckled President Barack Obama at a gay pride event over the federal government's poor treatment of transgender immigrants. The gathered activists booed her and shouted her down for interrupting the celebration. But just days later, federal officials announced they will make an effort to detain illegal immigrants by their gender preferences.

It's one thing to ask the law to curb *public* discrimination. In the private sector, it needs to be a matter of cultural negotiation and voluntary agreements. The law should not be used to mandate the recognition of transgender needs, whether that means requiring health insurance companies to cover gender reassignment surgeries or forcing private businesses to accommodate bathroom choices. The reverse is also true: It would be inappropriate for the government to forbid insurance coverage for gender reassignment or to require private businesses to police their own bathrooms to keep transgender people out. (As is often the case in culture wars, different states have recently proposed laws both to mandate and to outlaw transgender-friendly bathrooms.)

Adoption

In June, Florida finally ended its ban on gay parents adopting children. This was mostly a symbolic gesture, since the courts struck down the law in 2010. It is now legal across America for gay people to adopt children (except in Mississippi, but that ban faces a strong legal challenge); and now, thanks to same-sex marriage, they can adopt a partner's child as well. This fight is largely over. Indeed, it was pretty much won before gay marriage recognition was even seen as a widespread possibility.

But there is another side to this story, and it ties back into the treatment of people of faith. Some adoption agencies are affiliated with religious groups that do not want to serve same-sex couples or place children in same-sex homes. Most of these groups receive state funding, and are therefore subject to state regulation. Should

they be required to facilitate adoptions by gay parents?

Some states, such as Illinois, have attempted to force these adoption agencies to serve gays. As a result, Catholic Charities, which helped the state find adoptive and foster homes for children for four decades, stopped providing its services in 2011. At the time, Anthony Martinez of the Illinois Civil Rights Agenda declared this a victory, saying, “Finding a loving home for the thousands in the foster/adoption system should be the priority, not trying to exclude people based on religious dogma.” But this statement is a huge misreading of how the adoption process works. The likely result is that some kids will have a more difficult time finding homes.

Walter Olson, a legal analyst for the Cato Institute, is a contributing editor at **reason**. He’s also gay and the parent of an adopted child. In Olson’s experience, the more agencies out there helping children look for homes, the better. The existence of Catholic Charities as one among a number of adoption agencies does not prevent gay couples from accessing the same pool of children through other agencies. Much as with the controversies over bakers and florists, being denied service by one agency does not prevent a gay couple from finding and adopting children. But eliminating Catholic Charities from the pool does reduce the number of people able to help place kids in homes. They children are the ones who are punished when adoption agencies leave a state.

This is especially important when dealing with older children or those with special medical needs, who are often hardest to find homes for. “There have been two groups of angels who have stepped in again and again” to adopt children in difficult situations, Olson explains: “the gays and the highly devout religious people.” Children in the system do not gain anything by politicizing adoptions and preferencing one side over the other.

Olson acknowledges that many of these adoption agencies take taxpayer money, but he points out that it’s much more expensive to leave children to be raised by the state, not to mention terribly cruel. “If you don’t care about the kids or

the families, at least care about the taxpayers,” Olson says. But you should probably care about the kids, too.

Some teens in the system may be gay, and we want the system to be able to place them. But some kids in the system may be very devout themselves, and they also have a right to find a family where they fit. Fighting against religious adoption agencies doesn’t create a better system. It hurts kids.

This is not an either/or scenario. A highly decentralized adoption process should cater to everybody without forcing out organizations guided by religious principles—even if such principles lead sometimes to overt discrimination.

Bullying in Schools

The past decade has seen increased attention on suicide rates among gay, lesbian, and transgender teens. It may seem counterintuitive that gay suicides could still be such a serious problem, given that American culture has become so much more of tolerant gay and transgender people than just a decade ago. But as a result of these cultural changes, we have teens coming out of the closet at a much younger age, at a time when they and their peers are still hammering out their identities and learning the intricacies of cultural navigation. Bullying is an outcome of this push and pull. It is not harmless, but it is normal.

Whatever we do to curtail bullying, therefore, needs to include the understanding that we are dealing with children on both sides. As with the other issues, libertarians think it dangerous to use the law to punish people—in this case, kids—when social tools are better suited to this battle. We should hold schools responsible for keeping students physically safe while in their custody. But before considering new policies meant to fight bullying, activists need to remember that public schools are already using terrible, oppressive disciplinary practices to discard students—often pushing them into the criminal justice system—at the first sign of trouble. The last thing we need is more “zero tolerance” policies. In fact, the federal government’s own anti-bullying education materials warn that “suspending or expelling students who bully does not reduce bullying behavior.”

While the gay movement has coalesced around concerns about bullied teens, thus far there is no sign of a single plan of action. Libertarians and the gay movement are not necessarily opponents here. Rather, the role of libertarians would be to discourage emotional, largely symbolic policies in which school districts purge troubled students rather than actually dealing with problems.

Under the Equality Act, any business that has customers would count as a public accommodation, and therefore be subject to anti-discrimination laws.

School choice can help. If a student finds himself in an inhospitable environment with an unhelpful administration (these two situations often run in tandem), rather than having to fight the school district over it, parents should be empowered to yank their kids out and find a better situation. Not only does such a system protect the emotional health of gay children, but because schools get money based on student attendance, it creates good economic incentives that push administrators to consider changes that don't involve potentially disastrous "one-size-fits-all" solutions.

What's to Come?

One month after *Obergefell*, Sen. Jeff Merkley (D-Ore.) and Rep. Dave Cicilline (D-R.I.) introduced the Equality Act to expand several federal anti-discrimination protections to include sexual orientation and gender identity. This bill is much broader than ENDA, encompassing not just employment discrimination but housing, lending, jury service, and public accommodations.

In addition to adding new categories to the Civil Rights Act of 1964 and the Fair Housing Act of 1968, the Equality Act would drastically widen what the federal government classifies as a "public accommodation." Federal law currently has a more limited definition than many states do, confining the phrase to cover hotels, food providers, gas stations, and entertainment venues. The Equality Act would add any business that provides "a good, service, or program," including transportation providers. Under the Equality Act, any business that has customers would count as a public accommodation, and therefore nearly any business in the United States could be subjected to federal sanctions for any form of discrimination listed in the Civil Rights Act. The Equality Act would also prevent the federal Religious Freedom Restoration Act from being used as a defense against accusations of discrimination against a protected class.

The goal, it seems, is to combine nearly every single mat-

ter of interest to the gay, lesbian, bisexual, and transgender communities into one big bill. This legislation clearly has little chance of passing a GOP-controlled Congress. But that probably isn't the point as we head toward what is looking to be a raucous 2016 election. The Equality Act has nearly 200 sponsors in Congress, all Democrats. Gay and lesbian rights could remain a campaign issue, but unlike in previous years, it will be the Democrats using it as a wedge issue, not the Republicans.

As the debate shifts from government treatment to private treatment, libertarians may find more alignment with the right in a culture battle that once put libertarians and conservatives on opposite sides. Even so, the truce is bound to be an uneasy one. Libertarians care more about restraining government authority over the individual than allegiance to anybody's "side." Support for the rights of religious conservatives to discriminate should not be taken as endorsement or encouragement for their goals or moral framework.

As a gay libertarian, I support the right of a baker to decline to produce a wedding cake for a same-sex couple, but don't expect me to buy so much as a cookie at their shop. And now that government-enforced oppression and discrimination is ending, I'd much rather see my peers embrace a world where we are all equally free to decide the terms by which we deal with each other, not one where we seize the same government powers that were once used to abuse us and use them to pummel our ideological opponents. ■

Scott Shackford (sshackford@reason.com) is an associate editor at **reason**.

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Why Intellectuals Hate Capitalism

Whole Foods CEO John Mackey on entrepreneurship, snobbery, and the minimum wage

Interview by Nick Gillespie

“INTELLECTUALS HAVE always disdained commerce,” says Whole Foods Market co-founder John Mackey. They “have always sided with the aristocrats to maintain a society where the businesspeople were kept down.” Having helped create the global grocery chain intellectuals arguably like best, Mackey has evolved into one of capitalism’s most persuasive champions, making the moral, practical, and even spiritual case that free exchange ennobles all who participate.

More than any other retailer, Whole Foods has reconfigured what and how America eats. Since opening its first store in Austin, Texas, in 1980, the company has helped its customers

develop a taste for high-quality meats, produce, cheeses, and wines, as well as for information about where all the stuff gets sourced. Mackey, 62, continues to set the pace for what’s expected in organic and sustainably harvested food.

Because of Whole Foods’ educated customer base and because Mackey is himself a vegan and a champion of collaboration between management and workers, it’s easy to mistake him for a progressive left-winger. Indeed, an early version of Jonah Goldberg’s bestselling 2008 book *Liberal Fascism* even bore the subtitle “The Totalitarian Temptation from Hegel to Whole Foods.”

Yet that misses the radical vision of capitalism at the heart of Mackey's thought. A high-profile critic of the minimum wage, Obamacare, and the regulatory state, Mackey believes that free markets are the best way not only to raise living standards but to create meaning for individuals, communities, and society. At the same time, he challenges a number of libertarian dogmas, including the notion that publicly traded companies should always seek to exclusively maximize shareholder value. *Conscious Capitalism*, the 2013 book he co-authored with Rajendra Sisodia, lays out a detailed vision for a post-industrial capitalism that addresses spiritual desire as much as physical need.

Reason TV's Nick Gillespie talked with Mackey earlier this summer at FreedomFest in Las Vegas. To see the full video, go to **reason.com**. (*Disclosure: Whole Foods Market is a supporter of Reason Foundation, the nonprofit that publishes this magazine.*)

reason: You believe capitalism is not only the greatest wealth creator but helps poor people get rich. But you see it as constantly being misrepresented, even by its champions. Why is capitalism under attack?

John Mackey: Intellectuals have always disdained commerce. That is something that tradesmen did—people that were in a lower class. Minorities oftentimes did it, like you had the Jews in the West. And when they became wealthy and successful and rose, then they were envied, they were persecuted and their wealth confiscated, and many times they were run out of country after country. Same thing happened with the Chinese in the East. They were great businesspeople as well.

So the intellectuals have always sided with the aristocrats to maintain a society where the businesspeople were kept down. You might say that capitalism was the first time that businesspeople caught a break. Because of Adam Smith and the philosophy that came along with that, the industrial revolution began this huge upward surge of prosperity.

reason: Is it a misunderstanding of what business does? Is it envy? Is it a lack of capacity to understand that what entrepreneurs do, or what innovators do, is take a bunch of things that might not be worth much separately and then they transform them? What is the root of the antagonism toward commerce?

Mackey: It's sort of where people stand in the social hierarchy. If you live in a more business-oriented society, like the United States has been, then you have these businesspeople, who [the intellectuals] don't judge

to be very intelligent or well-educated, having lots of money—and they begin to buy political power with it, and they rise in the social hierarchy. Whereas the really intelligent people, the intellectuals, are less important. And I don't think they like that.

That's one of the main reasons the intellectuals have usually disdained commerce. They haven't seen it [as a] dynamic, creative force, because they measure themselves against these people, and they think they're superior, and yet in the social hierarchy they're not seen as more important. I think that drives them crazy.

reason: A lot of the times the businesspeople are plucky upstarts—they're innovators, they're disruptive, and they're fighting against the power. But once they get to a certain point of influence or power, they often start to try and rig the market or freeze the market in their favor. Why is that?

Mackey: I don't know if it's a psychological switch so much as that they weren't necessarily grounded in the philosophy of capitalism. They weren't necessarily advocates of the free market. They were just advocates of their own advancement, their own personal enrichment. And so I think oftentimes, they don't make a distinction between when they're entrepreneurs on the way up versus when they've arrived. They're attempting to not fall, so they try to rig the game, and we have crony capitalism.

reason: We live in an age where there are an unbelievable amount of government mandates that restrict the ability of business owners and employees to really negotiate about stuff. Some are things as obvious as the minimum wage, where it says, "Under no circumstances can a business offer somebody less than this amount." How do these affect your ability to run a business in an extremely competitive market?

Mackey: The impetus behind so many of these types of regulations in the workplace is, in a sense, to shackle business again—to get it back under the control of the intellectuals. Just like commerce: If you study the history of business, you will see that most of the time in our history, commerce was controlled by the aristocrats. The merchants were kept under their thumb. And now they've escaped and we have this free-market ideology that says the market should determine all these things. They're systematically undermining that marketplace to get business back, get the genie back in the bottle.

Of course, that will stifle innovation. It'll stifle the dynamic creative destruction of capitalism. But I don't

“If you’re forced to give paid time off, if you’re forced to give maternity leave, you’re forced to give paternity leave, you must give this many vacation days—well, those are all costs to the business [and] there’s no free lunch there.”

think they’re thinking about it that way. They’re very concerned about the motives of business, and they see it as this selfish, greedy, exploitative thing. Business-people can’t be trusted, markets aren’t just, they’re not fair, so we need to intervene, we need to control this situation.

Let’s take the minimum wage. Let’s say Tom wants to go work for Whole Foods Market, and Tom is willing to work for Whole Foods for, you know, \$10 an hour. And we want to hire Tom, and we think Tom is worth about \$10 an hour, so we come together, and Tom’s winning. We’re not forcing him to work there. He’s getting benefits. He’s getting opportunities to advance, learn new skills, and make more money in the future. We’re gaining from it because we think he’s going to be a good employee, and we think \$10 is a fair wage. However, the government may not let us do that. They may say, “You can’t pay Tom \$10 an hour, because we’re going to set a minimum wage of \$15 an hour.” So the government’s basically saying, “We know better what’s [good] for Tom, and we know better what’s [good] for you, and we’re not gonna let you guys freely come together and do voluntary exchange.”

reason: The argument is that especially in an era where there’s high unemployment and low labor-force participation, it’s a buyer’s market. Tom wants to work for \$10, but you could probably get him for \$5 or \$6. So the argument is that, somebody’s got to look out for Tom.

Mackey: Well, first of all, I think Tom can look out for himself. But [second], that’s basically a myth. Wages in a marketplace are determined by productivity. Why should we pay Tom even \$10 an hour? If we can control the wages, then why don’t we just pay him 10 cents an hour? Why not? Because Tom could go get a job someplace else that would pay him better. Wages are determined through competitive marketplace dy-

namics. And wages will settle at the marginal level of productivity, meaning we might like to pay Tom less, but Tom’s not willing to work for less, and he can get a job down the street that pays him what he thinks he’s worth. So the competition between employers sets wages.

When the government sets it, it’s inevitably going to screw it up. It’s going to set them too high, and so a company like Whole Foods Market—let’s say they say the minimum wage is \$15, but Tom’s only worth \$10 to us. Well, what we’ll do is we’ll restructure our marketplace so that we’ll provide less service. We’re actually a very high-service supermarket, but if they make service too expensive, so our customers aren’t willing to pay for it, then the rational, logical thing to do would be to cut back. Do more self-service, make people queue up in lines longer, so we can keep our labor costs under control, so we can be competitive in the marketplace.

reason: What are some of the other, less obvious regulations that really hinder the ability of business and individuals to come together, or to be flexible and innovative?

Mackey: There are hundreds of them, and most of them, as you say, are hidden. One, perhaps, that’s not so hidden is Obamacare. Again, it’s determining, rather than letting the marketplace determine, health care in a competitive format. They’re basically saying, “You must cover this.”

Let’s say they mandate that you must cover in vitro fertilization, which as far as I know is not really an illness or a health condition, but [let’s say] some lobbyist somewhere can jam that through. When they jammed it through in Massachusetts and forced us to cover that, we were paying an extra \$750 a person for health insurance, and there’s no free lunch. So if we’re paying an extra \$750 to cover everybody in the work-

“Do I feel resistance from traditional free-marketeers and libertarians? Yeah. Old ones. But as they say, social progress is made one funeral at a time.”

place so they can get in vitro fertilization—so someone, sometime can get it—well, the result is they’re going to get \$750 less in [other forms of] compensation. I think this is what people don’t understand: If you mandate certain benefits then the cash compensation’s going to be less. Oftentimes, you’ll see studies that show that “real wages” are stuck. Well, real wages *and* benefits aren’t stuck, but you don’t necessarily see that.

reason: So it might be that the pay is stuck, but the overall compensation, the fringe benefits, etc.—

Mackey: Exactly. They’re forcing us to cover more things. If you’re forced to give paid time off, if you’re forced to give maternity leave, you’re forced to give paternity leave, you must give this many vacation days—well, those are all costs to the business. They sound good, but there’s no free lunch there. So if they’re raising our costs through benefits, then necessarily total cash compensation must be reduced. Then they say, “You’re going to have to pay this much in cash compensation.” Again, there’s no free lunch. So we’ll either have to cut back on labor, or we’ll raise prices to our customers. And they think, incorrectly, that you can somehow or another take it out of profits. But the profit fund is too small. At a business like Whole Foods Market, we pay seven to eight times more in wages than we actually make in profits.

reason: Some of the hardest people to convince of your vision of capitalism are libertarians who believe what Milton Friedman, one of your intellectual heroes, used to talk about—that the only responsibility of a business is to increase its shareholders’ values. Talk a little bit about what kind of resistance you get from people who are rock-ribbed free-marketeers, who [might disagree with] your discussion of capitalism being more broadly inclusive of not just shareholders, but also other types of stakeholders.

Mackey: I get quite a bit of resistance. And it’s a shame,

because if you think about what really empowers the left to put high living-wage compensation, or minimum wages, or mandates of a bunch of benefits, or additional regulations on the business, it’s because they don’t think business is “good.” They think business exists simply to maximize shareholder value and make profits. So if that’s really the motivation for business, if it’s not a more inclusive philosophy, then they feel quite justified in hamstringing business. Because they’re basically a bunch of psychopaths running around trying to line their own pockets; we can’t trust them to do the right thing, so we’re going to have to do it for them.

In a more inclusive view, business has these responsibilities to all its stakeholders, customers, employees, investors, suppliers, and the larger community. If business behaved like that, the impulse to regulate and control would be lessened.

reason: Do you think we’re shifting into a mode of capitalism where the idea of “doing well by doing good” is really starting to come into focus and will start energizing the way people think about business, and for-profits and nonprofits, and how the two may not be so diametrically opposed?

Mackey: I really do. When you asked me the previous question, do I feel resistance from traditional free-marketeers and libertarians? Yeah. Old ones. But as they say, social progress is made one funeral at a time. Young people are eager for these ideas. I’ve oftentimes gone to business schools and talked about this, and I see the professors with their arms crossed, saying, “This is about shareholder value.” But the students, the MBA students, they’re lapping it up, because this is exactly what they want to believe. “Yes, I can get rich, and I can do good.” That seems like a win-win strategy to them and to me. ■

How to Cover Up the Pesticide Industry's GMO Scheme and New 2,4 D "Agent Orange" Crops

SLATE'S WILLIAM SALETAN SHOWS HOW IT'S DONE

DAVID BRONNER CEO, Dr. Bronner's

There's been no shortage of journalists of late flacking for the pesticide and junk food industries regarding genetically engineered foods, aka Genetically Modified Organisms (GMOs). This coincides with the massive industry PR push behind the Safe and Affordable Food Labeling (SAFE) Act, ie. the Deny Americans the Right to Know (DARK) Act, which will stop states from requiring disclosure of GMO foods. Easily fooled and blind to their bias, these journalists focus on irrational or fringe elements in the movement to label GMO foods, celebrate commercially insignificant examples of GMOs, and cover up that over 90% of GMO food acreage is engineered by chemical companies to survive huge doses of

genetic engineering. I want to take you down into the details of four GMO fights, because that's where you'll find truth. You'll come to the last curtain, the one that hides the reality of the anti-GMO movement. And you'll see what's behind it."

He then spends 5,000 plus words discussing genetically engineered virus-resistant papaya that represents less than 0.001% of GMO crop acreage worldwide, and beta-carotene-enriched genetically engineered rice that represents exactly zero percent. Only at the end of the article does Saletan devote any attention to the real concern driving the modern GMO labeling movement: that pesticide companies are engineering major food crops to survive huge volumes of the toxic weed killers they sell. And even then he lays down pesticide industry spin that Glyphosate—

their killing power on bees, pollinators and other non-target wildlife. (See former EPA Senior Scientist Dr. Ray Seidler's "Pesticide Use on Genetically Engineered Crops.")

Up until 2011 I myself was a sucker for industry-fed propaganda served up by the likes of Saletan, that GMOs were mostly nutrient-enriched drought-tolerant yield-boosted crops that require less pesticides. But then the government deregulated "Round-Up Ready Alfalfa" and the charade was over: GMOs are about chemical companies engineering crops to tolerate huge doses of the weed killer they sell. Alfalfa isn't even generally sprayed with herbicide in the first place. A huge swath of the American public woke up to the fact that GMOs are really about pesticide companies selling pesticides, and the modern GMO labeling movement was born. Commercially insignificant GMOs like GMO papayas, rice, apples and potatoes are red herring distractions and not the issue. Herbicide-tolerant 2,4 D & Glyphosate food crops are what's for dinner and should be Exhibit A when discussing labeling GMOs. And regardless of potential risks, just as consumers have a right to know if orange juice is from concentrate or if vanilla is artificial, they have a right to know if food has been genetically engineered.

Journalists covering science, agriculture and food need to wake up to the influence and track record of the pesticide and junk food industries, and stand up for the public interest.

weed killer. Rather than sound the alarm that the pesticide industry's new 2,4 D herbicide-tolerant GMO crops were recently greenlighted for planting this spring by industry-friendly regulators, these journalists bury the fact they are destined for our dinner plates this fall.

William Saletan of Slate, prominent spoon-fed banger of drums in support of war in Iraq, recently stepped up to show fellow media lackeys how best to swallow and regurgitate pesticide and junk food talking points on GMOs, and advised Americans they don't need to know what they eat and feed their families. In his article, "Unhealthy Fixation" Saletan states:

"If you're like me, you don't really want to wade into this issue. It's too big, technical, and confusing. But come with me, just this once. I want to take you backstage, behind those blanket assurances about the safety of

the main herbicide GMOs are engineered to tolerate whose use has skyrocketed on food—is "safer," even though the World Health Organization determined earlier this year that Glyphosate is a "probable carcinogen" (which he alludes to only by hyperlink without explicitly stating and interfering with his argument.) Even more egregiously, he fails to state that the pesticide industry's next generation "stacked" herbicide-tolerant GMO crops also tolerate huge amounts of 2,4 D, an older toxic herbicide that composed one-half of the dioxin-contaminated defoliant Agent Orange.

Saletan also blithely asserts that genetically engineered Bt insecticide in GMO corn has led to a reduction of insecticide use, failing to mention that use of systemic neonicotinoid insecticides on GMO corn has skyrocketed from zero to almost 100% in the past twelve years—insecticides which are banned in the EU due to

Journalists covering science, agriculture and food need to wake up to the influence and track record of the pesticide and junk food industries, and stand up for the public interest. These industries are desperately trying to force the DARK Act through Congress. This bill would pre-empt citizens' rights to enact mandatory GMO labeling, and its backers are counting on clueless journalists to help them do it. But hopefully our elected representatives will stand up for our simple right to know if our food is engineered to be saturated in toxic herbicide—a right citizens in 64 other countries already have.

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Paid for by Dr. Bronner's

Stand Up for Your Right to Know! Take action now to stop the DARK Act: easily call or write your Congresspeople by visiting JustLabelIt.org

Constitutional Prostitution

A California lawsuit could bring sex work out into the open.

Zach Weissmueller

“SOMEWHERE, some document says that I’m entitled to the pursuit of happiness,” says Bacchus, a burly Oakland, California, man sporting a white beard and a wide grin that evoke the mythical character whose name he has appropriated. “I can’t think of many things that make most people happier than sex.”

When Bacchus was an infant, a surgery intended to repair a birth defect instead left his penis mangled, tiny, and nerve-damaged. When he reached puberty, he realized he was unable to achieve climax without hours of stimulation. His condition

crippled his ability to pursue romantic and sexual relationships.

As an adult, he consulted a sex therapist, who prescribed him a “sex surrogate.” The surrogate told him what he’d always known: He had a physical problem that required the skill and patience of a professional. Unwilling to jump through the expensive hoops required to continue using the services of the surrogate, Bacchus turned to another type of sex worker: prostitutes.

Prostitution is, of course, illegal in California, just as it is in every other

place in America aside from a few rural Nevada counties. But a new lawsuit naming California’s attorney general and several mayors as defendants claims that prohibitions against sex work, while nearly ubiquitous, are unconstitutional.

“We don’t have equal protection under the law,” says Maxine Doogan, a working prostitute and president of the Erotic Service Provider Legal, Education, and Research Project (ESPLER), the group behind the lawsuit.

The plaintiffs in the case include several unnamed prostitutes living in the San Francisco Bay Area, as well as an anonymous customer, or “john,” who much like Bacchus says he uses prostitutes because he has a disability and can’t get sexual relief any other way.

ESPLER’s case rests upon three main constitutional issues: a right to “sexual privacy” protected by the 14th Amendment, a due process right to earn a living, and the First Amendment’s guarantee of freedom of association.

“A very, very broad anti-prostitution statute violates a constitutional right to privacy,” says Jerald Mosley, a lawyer who served as a deputy supervising attorney general under California Attorney General Kamala Harris, one of the defendants named in ESPLER’s suit. Mosley is now argu-



Bacchus (Alexis García)

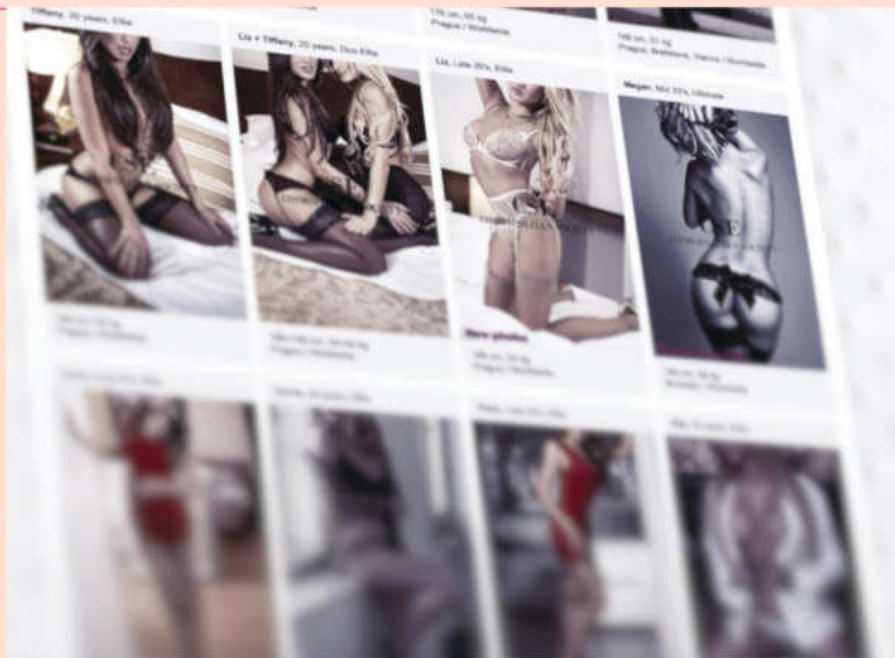
ing against his old boss in favor of decriminalizing prostitution.

The key legal precedent for ESPLER's case is *Lawrence v. Texas*, the 2003 case in which the U.S. Supreme Court struck down an anti-sodomy law because it violated a gay couple's right to sexual privacy under the 14th Amendment.

Mosley argues that the relationship between a prostitute and a client, which can be as much about emotional intimacy as it is about sexual gratification, falls into the protected category addressed in *Lawrence* and therefore cannot be banned by the state without an overriding "legitimate" government interest.

The attorney general's office filed a motion to dismiss ESPLER's case in May, citing several alleged legitimate interests in keeping prostitution illegal, including the state's interest in "detering human trafficking and coercion," "the spread of AIDS and venereal disease," and "California's interest in deterring commodification of sex."

When it comes to the spread of infectious diseases, advocates point out that the incidence of venereal disease is comparable to, and often lower, among sex workers than it is among the general population. Nevada has not documented a single case of HIV among workers in its legal brothels. A U.N. report found "very low" rates of sexually transmitted infections among the sex workers of New Zealand, a country whose total decriminalization of prostitution many advocates consider to be the gold standard in sex work policy. The evidence is so strong that former U.S. Surgeon General Joycelyn Elders has called for the legalization of prostitution as a public health measure.



And the state's line about human trafficking is an increasingly common scare tactic used by legalization opponents to conflate voluntary and involuntary sex work, says Mosley (see "The War on Sex Trafficking Is the New War on Drugs," page 18). But it's the government's concerns about the "commodification of sex" that he finds most outrageous. "When we talk about commodification... we're not giving reasons for disapproving of prostitution," says Mosley. "We're just signaling that we have a very, very deep emotional opposition to it."

The fate of ESPLER's case could be decided any day now when a judge in the U.S. Northern District Court of California rules on the government's motion to dismiss. Whatever the out-



come, advocates of decriminalization are vowing to push the fight onto the national stage.

"I really think that the American public is ready," says Doogan. "They're ready to throw off all of these draconian laws and move forward as a society." ■

Zach Weissmueller (zach@reason.tv) is a producer at Reason TV.

The Baseball Commissioner Who Made Bush President

The culture, politics, and economics of baseball in the Bud Selig era

Anthony L. Fisher

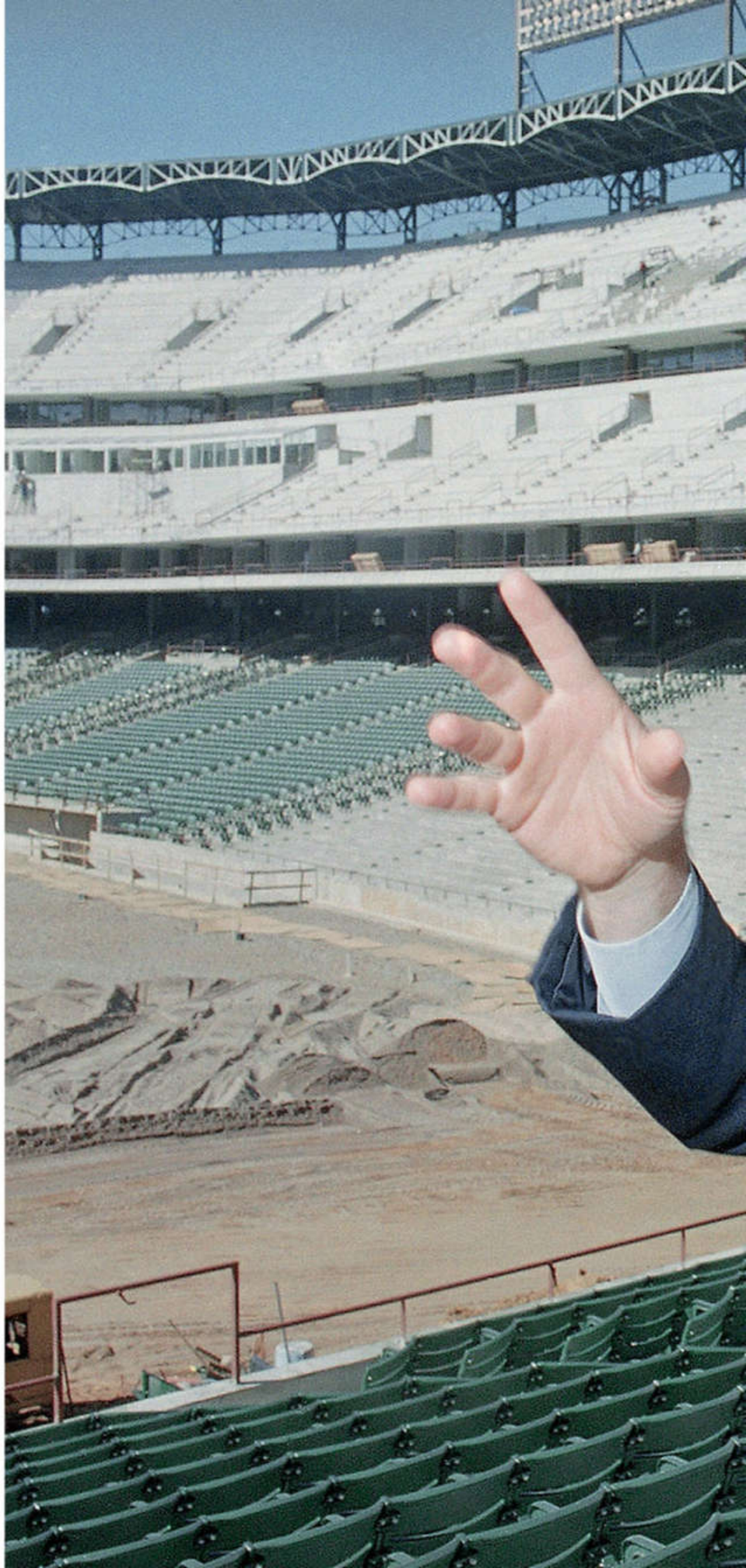
The Game: Inside the Secret World of Major League Baseball's Power Brokers, by Jon Pessah, Little, Brown and Company, 648 pages, \$30

IF NOT FOR Bud Selig, erstwhile owner of the Milwaukee Brewers, and his single-minded determination to control Major League Baseball's costs by imposing a salary cap on players, George W. Bush probably would have never run for governor of Texas, much less president of the United States.

That is just one long-rumored story confirmed in Jon Pessah's *The Game*, a sweeping and comprehensive investigation of the business of baseball over the past three decades. Selig, along with former Players Association chief Donald Fehr and the late New York Yankees owner George Steinbrenner, is both credited and blamed for just about everything that has brought America's pastime into the modern era.

Once struggling to survive, Major League Baseball (MLB) now enjoys massive revenues, billion-dollar local TV contracts, and per-game atten-

George W. Bush at Texas Rangers new ballpark, November 1993 (Associated Press)







Debunking *Gasland*

The new feature documentary *FrackNation* demolishes the anti-fracking claims made in Josh Fox's Emmy-winning film *Gasland*. In a work funded by a Kickstarter campaign, Phelim McAleer and Ann McElhinney investigate the claims that fracking has contaminated private well water so badly that hapless residents can set their faucets on fire (it hasn't), that it so polluted air in a Texas town that it boosted cancer rates and caused brain damage (it didn't), and that it causes damaging earthquakes (it doesn't).

Anti-fracker Fox nervously and amusingly ducks many attempts by McAleer to get information about the evidence for his assertions in *Gasland*. One highlight is when a litigant claiming that fracking contaminated her well threatened both to shoot and to sic Natural Resources Defense Council lawyers on McAleer. An EPA video obtained via a Freedom of Information Act request shows the same husband and wife litigants threatening visiting federal agents when told that their water was uncontaminated.

—Ronald Bailey

dance levels that are up by more than 5,300 over 1995, even after a recent slight decline. But the game also suffers from a confused legacy, with its record books (fetishized by its fans like no other sport's) tainted in the minds of many by the influence of rampant performance-enhancing drug use.

It is Selig whose legacy is most scrutinized. For all his successes, the second-generation used car mogul from Milwaukee comes across as a panicky, short-sighted crony capitalist who fleeced the taxpayers and fans of his home city and actively enabled other owners to do the same.

To tell the ultimate inside-baseball story, Pessah, a founding editor at *ESPN: The Magazine*, interviewed more than 150 people, including players, coaches, senior front office staffers, and three MLB commissioners—Selig, Fay Vincent, and the new guy, Rob Manfred.

The story begins in the early 1990s, around the time Selig led a coup against Vincent, whom the owners deemed insufficiently devoted to their interests. Selig used the popular and gregarious Bush—the public face of the Texas Rangers, though he was just a minority owner—to whip the requisite votes in favor of removing the incumbent commissioner. The two small-market owners had a quiet understanding between them: Upon ousting Vincent, Selig would serve as interim commissioner, then, once the battlefield dust cleared, yield the throne to Bush.

Though Bush was a friend and longtime supporter of Vincent, he agreed to rally the troops to support the vote of “no confidence” in the commissioner, based largely on the promise that Selig “would support his dream to become baseball’s next Commissioner.” It didn’t work out that way. Selig would spend the next 22 years in Bush’s dream job. He would preside over a players’ strike that culminated in the only cancelled World Series in baseball history—something the Great Depression and two world wars couldn’t accomplish—but then help engineer a renaissance, thanks to the boom in attendance at new retro-designed family-

friendly ballparks (which replaced many cold and ugly ’60s and ’70s mixed-use behemoths), a surge in colorful international talent from places like Japan and the Dominican Republic, and, yes, the steroid-infused home run craze of the late ’90s and early ’00s. Selig was the proud steward of baseball’s rebirth, but once the steroid jig was up, he would become the flustered face of indignation.

The commissioner’s old ally in Texas, stuck with nothing else to do after Selig left him twisting in the wind for more than a year, never officially telling him that he had no intentions of abdicating, would be pushed by Karl Rove into running for governor. Bush unseated the incumbent in 1994, he launched a bid for the White House five years after that, and the rest is history.

Soon after Selig took the job, he was summoned before Congress for one of many hearings in which a committee of mad-as-hell senators threatened to revoke baseball’s anti-trust exemption if the sport failed to appoint an “independent commissioner” soon.

Congress’ leverage over MLB lies in that exemption. Baseball is the only professional sports league to enjoy the privilege of a legalized monopoly, thanks to a 1922 Supreme Court decision declaring that baseball is “not interstate commerce.” Pessah correctly calls this a “mistake” but is certain Congress will never reverse it—because then “what excuse would lawmakers have to hold hearings that give them invaluable face time on ESPN and headlines in the *New York Times*?”

As owner of one of the most moribund franchises in all of sports, residing in

the league's smallest media market, Selig's modus operandi for nearly all of his tenure was to stress the dire financial state of baseball and the majority of its teams. He was particularly offended by owners, such as Steinbrenner, who unapologetically reinvested their profits into the product on the field, agreeing with other owners' characterization of the Yankee boss as an "economic bully" who was "bad for the game." When confronted with the evidence of a number of well-run and innovative small-market teams consistently finding ways to compete—the Oakland Athletics and Tampa Bay Rays, for example—Selig brushed them off as short-term "aberrations." Pessah notes that Selig would never "consider that maybe he might not be very good at building a baseball team." He always insisted that the solution to fix the "broken" system was "taking more of Steinbrenner's money."

The commissioner would never deviate from this philosophy, despite the fact that MLB enjoys greater parity in the number of teams making it to the postseason than any of the other three major professional American sports leagues (all of which, it should be noted, have salary caps).

In the run-up to the disastrous 1994 players' strike, Selig pushed the mantra that fans of small-market teams need to have "hope and

faith" that their teams would have a reasonable chance of competing for a championship. In Selig's worldview, billionaires should not and could not be expected to invest in their vanity projects or responsibly manage their finances. Instead, less successful franchises should be subsidized by the more successful teams, and the players' "out of control" salaries must be capped if the league were to survive.

The Selig-led cadre of owners, many of whom were found to have illegally colluded during the 1987 offseason to not sign each other's free agents, demanded both a salary cap and revenue sharing, which Selig called "inextricably linked." To which Fehr, the players union leader, retorted, "The real linkage is the big market owners won't share with small market owners unless the players give them back the money."

A talented politician, Selig was able to unite all the owners, including the large-market Steinbrenner, into pushing his agenda. Though the 1994 strike would lead to a cancelled World Series and apocalyptic public relations while yielding no salary cap, the amenability of large-market teams to consider revenue sharing was established.

Revenue
sharing

would indeed help teams like the Oakland Athletics, whose General Manager Billy Beane revolutionized the game using advanced analytics to determine players' true value. The A's regularly reached the postseason despite playing in a universally loathed stadium ill-suited for baseball, housed in an economically depressed city, with one of the lowest payrolls in the league.

But too many other teams would simply pocket their revenue sharing funds, including the Florida Marlins, who *Deadspin* reported were turning a league-leading \$50 million in profits over two years when their payroll was at or near the bottom of the league. Another team taking in more revenue than it invested on payroll was Selig's own Brewers. (After six years as acting commissioner, Selig transferred ownership of the team to his daughter Wendy so he could maintain the pretense that he was an "independent commissioner.")

Though critical of a great many aspects of Selig's management, Pessah gives credit where it is due. Not too long after the players got back on the field in 1995, baseball's popularity boomed. As an owner, Selig's management was pathetic. As commissioner, he saw the game enjoy a renaissance, though it would come with a cost.

The rekindling of America's romance with baseball was sparked in large part by the great home run chase of 1998, when Mark McGwire and Sammy Sosa smashed Roger Maris' 37-year-old single-season home run record. Home runs were up all over the league, and fans lapped it up, filling up stadiums and spending tons of money on beer, hot





Founder of a Movement

Isabel Paterson was a novelist and a literary critic for the *New York Herald-Tribune* for more than two decades beginning in the 1920s. Her book *The God of the Machine* was a founding text of the modern libertarian movement as it grew in the '40s.

From her biographer Stephen Cox comes the first volume collecting some of her journalism and letters, *Culture & Liberty* (Transaction). Watching as she boldly swims against the currents of her time is inspiring. She wrote in 1933 that “we believe in the classic American concepts of a purely political government, which shall not undertake to save people’s souls or provide them an income.”

Ayn Rand considered Paterson, a one-time friend, one of the few modern thinkers from whom she’d learned. Even after their estrangement, Paterson in a 1957 letter was prescient and hopeful enough to write that *Atlas Shrugged* “will be a chunk of high explosive to ‘public opinion.’ ...It may have a definite effect on future events, like *Uncle Tom’s Cabin*.” —Brian Doherty

dogs, and memorabilia while they were there. The game was back, and very few in the media (and certainly no one in ownership) raised an eyebrow about the cartoonishly growing biceps of baseball’s slugging class.

By 2002, business was very good, but Selig continued to maintain the fiction of “chronic problems of competitive balance,” creating a “blue ribbon panel” to address it. The panel included George Will, Paul Volcker, and Sen. George Mitchell (D–Maine), who were brought in to add legitimacy to Selig’s perpetual “sky is falling” alarms.

Pessah plainly calls the panel’s findings “a farce...based on financials solely provided by MLB. No outside input was permitted.” He points to a *Forbes* article that debunks both the accuracy and the “overreactions” in the report’s recommendations.

Questioned about the report by Congress, Selig once again refused to reveal baseball’s finances. Instead he set out on a new mission to drive down operating costs: eliminating two teams. Knowing full well that the union would never allow the loss of so many players’ jobs without a fight, Selig persisted, telling the media that teams with a “long record of failing to operate a viable major league franchise” must be contracted.

Selig’s Brewers perfectly fit this description of a failing franchise, but they were never suggested as a possible candidate.

Pessah describes the threat of contraction as “extortion,” adding that it sent “a loud message to the players about the growth of wages and to any city that refuses to build a taxpayer-financed stadium: give us what we want or we may fold your team.”

At another congressional hearing soon after, then–Gov. Jesse Ventura, whose home state Minnesota Twins were one of the teams threatened with contraction, pulled no punches when he told Selig to his face that the owners’ perennial claims of poverty were “asinine,” adding, “These people did not get wealthy by being stupid.”

Ventura also noted that when the state

builds a public library, it doesn’t charge the public for admission. Why then should the public build a stadium for Twins owner Carl Pohlad, the second-wealthiest owner in the game, only to have Pohlad charge the public to enter it and reap the profits himself?

Common-sense logic from a professional wrestler turned populist politician proved no match for rich guys begging for bailouts. Taxpayer-subsidized stadiums would be the order of the day for the next decade, with more than half of all MLB teams receiving new publicly financed stadiums.

In addition, revenue sharing
Selig comes across as a panicky, short-sighted crony capitalist who fleeced the taxpayers and fans of his home city and actively enabled other owners to do the same.

would be substantially increased, with Steinbrenner’s Yankees kicking in 92 percent of collected luxury tax revenues, totaling in the hundreds of millions, to help finance small-market teams. No requirement that the luxury tax money be spent on payroll was ever implemented.

In *The Game*, Steinbrenner comes across as a fascinatingly complicated figure. Born wealthy, but not nearly as personally rich as most of the other owners, Steinbrenner valued winning over financial gain (though he loved his money too). Thin-skinned, vicious, and prone to manic fits of both rage and sentimentality, “The Boss” would twice be banned from (and reinstated to) baseball. A micromanaging miser when it came to small raises for budding superstars

like Derek Jeter and Mariano Rivera early in their careers, he could also be a reckless spendthrift when it came to aging veterans from other teams.

Though Steinbrenner's spending was always baseball's go-to boogeyman, blamed for driving up salaries league-wide, Pessah credits him as a visionary, one who showed other owners how much they "grossly undervalued their franchises." Steinbrenner's cable TV and marketing deals raised the bar of prosperity for all of baseball, to the point that the Los Angeles Dodgers could be sold for \$2 billion largely based on the weight of their local TV contract.

In the early 2000s, Jeff Novitzky, a crusading agent from the Internal Revenue Service, began the federal government's investigation of BALCO, a Bay Area laboratory and performance-enhancing drug outpost. A flood of revelations ensued about steroids in baseball.

Naturally, Selig and the owners blamed the problem on the players union's reluctance to acquiesce to drug testing. That is accurate to a point. But no one in ownership was agitating to "clean up the game" until the government, wielding the antitrust exemption as a cudgel, got involved.

And did they ever get involved. In 2004, Novitzky led federal raids on two private laboratories, seeking drug test results from 10 players implicated in the BALCO scandal. Instead, agents seized results from hundreds of major leaguers who had participated in what was supposed to be anonymous survey testing. (If more than 5 percent of players tested positive, random drug testing would be introduced into MLB the follow-

ing year. That threshold was met, and testing began in 2005.)

More than five years of court battles over these results resulted in players such as Alex Rodriguez, David Ortiz, Manny Ramirez, and Sammy Sosa being implicated as drug cheats thanks to illegal leaks whose provenance would never be determined.

In August 2009, the 9th U.S. Circuit Court of Appeals ordered the feds to return the results to the labs and the union. Judge Alex Kozinski called the government's tactics "an obvious case of deliberate overreaching" and "an effort to seize data as to which it lacked probable cause."

But government's efforts to litigate the steroid era wouldn't end there. The House Committee on Oversight and Government Reform—a committee, Pessah reminds us, that "failed to hold hearings into torture at Iraq's Abu Ghraib prison" and "never looked into how the Bush administration could send troops to war in Afghanistan and Iraq without proper armor"—once again held hearings on baseball.

Humiliated by the drug revelations, the legacy-obsessed Selig would spend his autumn years as baseball's boss desperately trying to redefine himself as a dugged steroid hunter. The man who enthusiastically celebrated the tainted McGwire/Sosa home run derby of 1998, Selig made a show of standing with his hands in his pockets when the steroid-implicated Barry Bonds tied Hank Aaron's career home run record in 2007.

That same year, former Sen. Mitchell, a longtime Selig ally (and Boston Red Sox executive), released his eponymous report, billed as the comprehensive history of the steroid

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Speakeasy Coffee

Receiving a shipment of product from Cartel del Café has a certain illicit appeal: Pulling aside the packaging reveals bulky white oblongs wrapped in faux duct tape, giving the initial illusion that the box may contain something a bit stronger than mere caffeine.

The bricks do contain an agricultural product from Nicaragua—coffee beans, not cocaine. Founder Noel Salinas says the drug-inflected branding is intentional. He hopes customers will take a minute to wonder, “What really is the difference between coffee and any other controlled substance that inevitably comes from the same earth?”

Noting that coffee itself has gone through periods of prohibition and legalization, Salinas says his primary goal is to make good coffee. But he and his co-founders also hope “to bring this thought to light without being so political.” The startup’s single-origin Nicaragua-Pacamara beans, which are roasted in Long Beach, California, produce a light, drinkable cup of coffee with citrusy notes.

—Katherine Mangu-Ward

era. It delivered on its promise to name names. But despite the millions Mitchell personally made on the report (paid for by MLB) and the two years it took to create, the document was mostly a retread of information already gleaned in the BALCO investigation.

The only significant scoops came from two snitching drug dealers who were able to cut deals to avoid prison by cooperating with Mitchell: New York Mets clubhouse attendant Kirk Radomski and former New York Yankees/Toronto Blue Jays trainer Brian McNamee, both of whom implicated dozens of players, including arguably the best pitcher of his generation, Roger Clemens.

For all its hype, the Mitchell Report would not

be the last word on the Steroid Era. In 2013, the South Florida-based “anti-aging clinic” Biogenesis was revealed to have been peddling performance enhancing drugs to numerous players, including such stars as Ryan Braun, Bartolo Colon, and Nelson Cruz—but none so drew Selig’s ire as much as Alex Rodriguez.

Unlike the three aforementioned players, Rodriguez had not failed a drug test, but the overwhelming evidence that he bought drugs from Biogenesis for years, plus his determination to obfuscate MLB’s investigation, led to open warfare between the commissioner and the player many once hoped would pass Barry Bonds on the career home run list and be anointed baseball’s “clean” home run champion.

As loathsome as the serial liar and recidivist cheat “A-Rod” is, Selig was determined to give him a run for his unethical money. He enlisted MLB’s “investigative team,” consisting of dozens of former police officers and even a head of the Secret Service, to nail the slugger at any cost—and baseball’s private cops would engage in plenty of legally questionable tactics to do it. Though the “I-Team” would succeed in securing demonstrable proof of Rodriguez’s years of drug purchases from Biogenesis, baseball would have to consort with known criminals, sometimes paying them cash for stolen documents in shady backroom deals, to preserve

the “integrity” of the game.

Pessah describes these efforts by Selig as having an ironic effect. Rodriguez’s legacy was already irreparably damaged, his name mud. But Selig’s personal quest to nail the fallen star only kept steroids and baseball prominently featured in the headlines for longer than they otherwise would have been.

Since the 1994 strike, baseball has enjoyed zero work stoppages. Players’ salaries continue to rise, but so do team revenues. Though he’s especially rough on Selig, Pessah ultimately credits him, Steinbrenner, and Fehr as titans of their time, all worthy of the sport’s Hall of Fame.

But with a fan base that grows older by the season, will future generations care about a game with a deliberately leisurely pace, one that has thus far failed to market its newest stars as effectively as the National Football League and National Basketball Association? Will they be entertained by the markedly decreased offensive output of the post-steroid era? Has the age of publicly subsidized stadiums finally come to a merciful end?

The Game can’t answer those questions, but it can help explain how we got here. This fascinating book demonstrates how an uneasy marriage of punitive socialism and barely restrained capitalism made MLB more profitable than it had ever been but left its future cloudy and uncertain. ■

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North Korea's Grassroots Capitalism

How creeping market forces are improving life in the Hermit Kingdom.

Andrei Lankov

North Korea Confidential: Private Markets, Fashion Trends, Prison Camps, Dissenters and Defectors, by Daniel Tudor and James Pearson, Tuttle, 192 pages, \$21.95

WHEN MOST PEOPLE in the West hear the phrase “North Korea,” they think of a country ruled by a fat boy-man with a terrible haircut who enjoys feeding family members to dogs, shooting defense ministers with anti-aircraft guns, and meeting eccentric basketball players. If they head to the library hoping to find a scholarly or journalistic account that cuts through the rumors and offers a more solidly sourced portrait of North Korean life, they will prob-

ably be disappointed. Even “serious” publications on the subject consist of little more than speculation about the nation’s nuclear capabilities and tea-leaf reading about the factions within the regime.

So it is refreshing to find a book that neither obsesses excessively over the nuclear issue nor treats the Democratic People’s Republic of Korea (DPRK) as simply a bad joke or the world’s most irrational place. *North Korea Confidential*, a recent effort by the journalists Daniel Tudor and James Pearson, is one such work.

The first sentence of the first chapter makes things clear: “‘Communist’ and ‘collectivized’ are utterly outdated labels for a North Korean economy which now heavily relies on thriving person-to-person market exchanges in which individuals buy and sell private property for the purpose of generating profit.” In spite of what is still almost universally believed, North Korea ceased to have

a Stalinist, centralized, planned economy some 20 years ago. Tudor and Pearson’s new book describes in vivid detail how this dramatic transformation has taken place.

The growth of North Korean “grassroots capitalism” (as some scholars call it) is not necessarily an unknown or unstudied phenomenon: A number of researchers, overwhelmingly but not exclusively from South Korea, have looked at North Korea’s nascent bourgeoisie and market economy. They have described how people in the 1990s, amid famine and consequent social dislocation, began to create new businesses from scratch, and how those ventures grew rapidly. They have also explored the enterprises that Tudor and Pearson call “private-public partnerships.” Under this very common model, state agencies lend their name to an aspiring entrepreneur, who disguises what is essentially a private operation as a state-owned enterprise. Restaurants, fishing businesses, and even some mines are de facto privately owned and operated, though they are registered as state property.

Tudor and Pearson synthesize this large body of research and ideas, along with their own reporting, into a highly readable, energetic, and compelling narrative that will probably be a complete revelation for non-Korean-speaking Western readers.

Let me be absolutely clear: Neither Pearson nor Tudor is an apologist for the regime. They remind us that common wisdom is often distorted or flat-out wrong, but they do not shy away from the grimmer elements of their subject. North Korea is a brutal and impoverished country with a highly authoritarian monarchy. The Kim dynasty has always



North Korea Confidential (cover detail)



Free Forum Radio

From 1962 to 1984, KRAB-FM was the strangest station in Seattle. Its “free forum” format featured poetry, comedy, odd interviews, obscure music, and a wide range of opinions. (At one point the John Birch Society and the Socialist Workers Party alternated in the same timeslot.) Once it even aired a live 20-hour group-therapy marathon.

The outlet was extremely influential in the small but vibrant world of community radio, where listener-sponsored stations can stake out an identity that is neither corporate nor NPR. And now it can be heard again: The KRAB Archive, online at krab.fm, is full of anecdotes, program guides, and—best of all—recordings of the shows themselves.

Whether it’s an interview with a leader of Britain’s Tory Party or an interview with a guy who lives in an old Kaiser automobile, a communiqué from a leftist band of bombers or a half-hour dedicated to Bulgarian brass ensembles, these audio files demonstrate just how much variety one radio station can contain.

—Jesse Walker

taken a ruthless approach to dealing with internal dissent, and it continues to do so. Anyone who dares to express views publicly that contradict the current official line is bound to disappear immediately into the country’s network of prison camps. Everybody understands this in North Korea, and as a result they keep their mouths shut. The book describes the world of the prison camps in great detail.

North Korea Confidential also shows that the country’s economic situation, while better than generally thought, remains quite bleak. Rich businessmen’s mistresses might be sipping lattes in upmarket Pyongyang cafés, but outside the city there are villages full of malnourished children. And North Korean liberalization has its limits. The private economy, however powerful, remains in a kind of limbo, neither recognized nor systematically suppressed by the state. No formal legal or financial infrastructure supports this semi-legal marketplace, and the Kim regime’s ideological commitments mean it is currently near-impossible for such structures to emerge.

But the book also skillfully informs readers about parts of North Korean life that outsiders often overlook or oversimplify. Tudor and Pearson correctly criticize “the ridiculous international media image that suggests that DPRK citizens are robots who simply live to serve their ‘Dear Leader.’” Like human beings the world over, North Koreans know how to have fun, and in the last 14 years it has become gradually easier for them to enjoy life.

The emergence and steady growth of the market economy has led to a palpable improvement in the economic situation, not just in Pyongyang but also in the countryside. North Koreans still live in poor circumstances, but the specter of famine no longer haunts the country as it once did. The state has also become significantly more permissive than it was in former times. This is partially a product of now-endemic corruption: A small bribe can make an official turn a blind eye to all manner of ideologically suspect activities, such as secretly watching foreign movies or listening

to subversive Western broadcasts. It also reflects a general decline in ideological zeal. In Tudor and Pearson’s words, North Koreans today “are less likely to inform on each other.”

As a result, North Koreans—especially the better-connected and more affluent ones—have begun to enjoy smuggled South Korean and Western culture on a hitherto unthinkable scale. South Korean pop music and TV shows seem to be especially popular. According to the law, these people are committing crimes. But in an age of cynical corrupt permissiveness, such laws are seldom enforced against anyone lucky enough to have a friend in the local government.

Even computers are beginning to get into North Korea, though it is still the only country without public Internet access. Only senior officials and security personnel with high-level clearance are allowed to surf the Net. But other North Koreans do have some access to a nationwide network called Kwangmyong, and they can also use USB sticks to exchange files with one another. Computers—largely elderly machines imported from China—can be found in many North Korean households.

Cellphone users are supposed to pay high tariffs, and the basic fee far exceeds the “official” monthly salary. Nonetheless, nearly 3 million North Koreans, out of a population of 25 million, have mobile phones nowadays. (Tudor and Pearson note “a majority of Pyongyangites between 20 and 50 years of age have cell phones.”) Among other things, this is a reminder that in North Korea today, few if any people make their living exclusively (or even largely) in the state economy.

The book also talks about

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America Innovates, and Prospers

The newest addition to the Smithsonian's Museum of American History is an exhibit called "America Innovates." The Mars Hall of American Business (namesake: the sponsoring candy company) now houses an ode to capitalism through the ages.

Beginning with the "merchant era" of the late 18th century and moving on to the "corporate era," then the "consumer era," and finally the "global era" starting in the 1980s, the exhibit highlights such libertarian-friendly values as entrepreneurship, invention, competition, and mass production. There's even a station celebrating the "everyday things that changed everything"—including the refrigerator, the television, the washing machine, and ready-to-wear clothing.

Concerns about rising consumer debt and stagnating wages in recent decades also feature prominently. One sign plays up the wonders of unionization, which it credits with finally allowing workers "to pursue 'the good life.'"

—Stephanie Slade

changes in fashion. The new Kim's wife, Ri Sol-ju, seems to be a trendsetter among younger North Korean women. Some of what she has been seen to wear would be considered ideologically dubious under the old regime of Kim Il Sung (or even Kim Jong Il, though to a lesser extent)—like a \$1,000 Christian Dior handbag or a rather short skirt—but her heresy has allowed others to follow suit and sport similarly bold clothing in public.

The country has also seen a construction boom, which ironically began around the time the U.N. introduced sanctions (another reminder of sanctions' hopeless inefficiency). The boom is driven by private investors. The state does not recognize property rights in real estate, yet North Koreans manage to sell and buy houses in Pyongyang. A good new apartment might cost the equivalent of \$200,000, while the actual income of the average family, mostly coming from the grey market, is about \$50–100 a month. Still, there are people in the North Korean capital who can afford this.

Remarkably, all this marketization was essentially spontaneous. The old Leninist command economy quietly expired after it was deprived of the Soviet subsidies that had kept it afloat, and the North Korean people more or less created a new system from scratch. There were no neoliberal economic advisers, and there was no reform drive from above. At best, the government was willing to turn a blind eye on developments that contradicted the official line. The new system emerged by itself—a result, as the Leninists used to say, of "the collective creative activity of the toiling masses."

The system they made is remarkably similar to early European capitalism, with all the associated social problems. But in North Korea, the system has one advantage over its predecessor, the Stalinist economy: It works.

If there is a substantial flaw in Tudor and Pearson's account, it is their discussion of North Korean high politics. A description of daily life and economics can be cross-examined, thanks to the large population of refugees in South Korea and thanks to the Chinese and North

Korean merchants who can be interviewed outside the country's borders. In those areas, we can be quite certain about the authors' findings. Politics is much murkier. Only a handful of refugees who claim to have knowledge about the corridors of power in Pyongyang are available to tell us what is going on, and their claims are usually unverifiable.

The authors support a popular theory that North Korea is actually run by the Organization and Guidance Department of the Korean Workers' Party, a highly secretive organization that allegedly acts as collective kingmaker behind the scenes. Numerous scholars have criticized this thesis, arguing that many recent North Korean policies—theme

Remarkably, all this marketization was essentially spontaneous.

park construction, inviting sports celebrities to the country—clearly reflect the individual tastes and experiences of the young Kim rather than his aging bureaucrats. Given the scarcity of reliable information, we cannot rule out the possibility that the theory is true, but it is still based upon scant evidence. Unfortunately, Tudor and Pearson present it the same way as they present far more reliable data on North Korea's economic transformation.

Other than that, *North Korea Confidential* is a boon for anyone who wants to wade past the cliché-ridden horror stories and learn about the lives of ordinary North Koreans. There are few books like it. ■

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Surviving Nagasaki

History, memory, and nuclear devastation

Anthony Gregory

Nagasaki: Life After Nuclear War, by Susan Southard, Viking, 416 pages, \$28.95

WHEN THE U.S. dropped an atomic bomb on Nagasaki at the end of the Second World War, Yoshida Katsuji was horrifically injured. “Like everyone else in Nagasaki that day,” Susan Southard writes, his “immediate survival and degree of injury from burns and radiation depended entirely on his exact location,” the direction he faced, his clothing, and which buildings and natural structures stood between him and the blast. Half a mile away from the explosion, Yoshida saw the skin from his arm

“peeled off and was hanging down from his fingertips.” “Blood was pouring out of my flesh,” he recalls.

Do-oh Mineko’s story is even more gruesome. The “whole left side of her body was badly burned, a bone was sticking out of her right arm at the elbow, hundreds of glass splinters had penetrated most of her body, and blood was streaming down her neck,” Southard reports. There was a “wide and deep horizontal gash stretching from one ear to the other, filled with shards of glass and wood.” By candlelight and without anesthesia, a doctor removed hundreds of glass shards and splinters from her body and head as she screamed all night, praying to die.

The immediate aftermath of days and weeks did not bring an end to the pain and suffering. A decade after

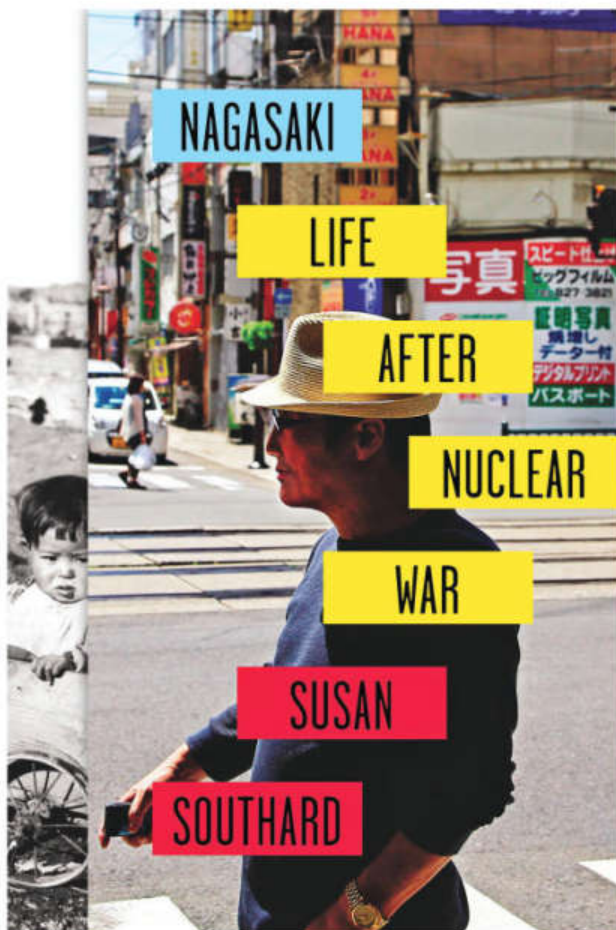
the war, Southard notes, survivors still suffered “blood, cardiovascular, liver, and endocrinological disorders, low blood cell counts, severe anemia, thyroid disorders, internal organ damage, cataracts, and premature aging.” They were routinely rejected as suitors for marriage. They faced an extreme and often unobtainable burden of proof to secure access to the health examinations provided to survivors under the 1957 Atomic Bomb Victims Medical Care Law. Yoshida’s children endured the

shameful predicament of telling their friends what had happened to their father’s face.

Even the nearly instantaneous destruction of hundreds of thousands of lives can become somewhat lost in a war where 60 million people, mostly civilians, died. In *Nagasaki: Life After Nuclear War*, Southard, who holds a degree in creative nonfiction, focuses on five survivors, tracking their post-bomb lives and consulting hundreds of other primary and secondary sources.

In addition to Yoshida and Do-oh, Southard describes the fates of Nagano Etsuko, Taniguchi Sumiteru, and Wada Koichi, “among the select few who keep the public memory of the atomic bomb alive.” These survivors’ memories lend texture and depth to the book, which is built on a solid framework of scholarly literature. Theorists of history should find interest in the tricky methodological balance Southard strikes.

Southard is up against collective memory. She cites a 1995 Gallup poll finding that one-fourth of Americans had no knowledge of the atomic bombings and that few understood their severity. Looking not just at the bombing and its aftermath, but at the memory of that history, Southard examines the institutional factors that shaped public understanding. General Douglas MacArthur’s censors, who required the preapproval of press publications in occupied Japan to prevent “false or destructive criticism of the Allied Powers,” rejected *Chicago Tribune* journalist George Weller’s reports on the devastation. The U.S. government, whose scientists had “conducted no studies on the potential effects of high-dose, whole-body radiation exposure on the





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people of Japan,” tried to control the scientific determination of what had happened. More than 8,000 Americans and Japanese worked in the Civil Censorship Detachment, which monitored media, personal correspondence, and telecommunications. In 1945, the United States confiscated Japanese researchers’ “early blood samples, specimens, photographs, questionnaires, and clinical records from victims’ autopsies and survivors’ examinations.”

The United States had an interest in rationalizing the bombings. In the wake of the war, Americans read about how many lives the bombs supposedly saved. Karl T. Compton, presi-

According to a 1995 Gallup poll, one-fourth of Americans had no knowledge of the atomic bombings and few understood their severity.

dent of MIT, wrote a December 1946 *Atlantic* piece estimating that the bomb had saved “hundreds of thousands—perhaps several millions” of Americans and Japanese from perishing in a prolonged war. Former Secretary of War Henry Stimson presented similarly high estimates, neglecting to mention the fraught debates among top officials over the U.S. demand for unconditional Japanese surrender and other complicating facts. Meanwhile, American officials censored publications on the bombings, forcing a U.S.-written appendix that highlighted Japanese atrocities onto Takashi Nagai’s 1947 book *The Bells of Nagasaki*. America’s nuclear build-up in the early Cold War made officials all the more guarded against bad publicity for this new weapon of war. It wasn’t until 1967 that the

United States finally sent footage of the post-bombing wreckage back to Japan.

Struggle over memory also transpired within Japan, where the bombing’s meaning was highly contested. In 1969 Tatsuichiro Akizuki, a Nagasaki-based doctor, launched the Nagasaki Testimonial Society, calling on written records of first-hand experience with the ultimate goal of abolishing nuclear weapons. The project gave voice to survivors frustrated with the hesitance of the Japanese government, now allied with the United States, to condemn the bombings, and with official textbooks that minimized their calamity in an effort to rehabilitate Japanese nationalism.

According to a 2015 Pew Research Center poll, 56 percent of Americans consider the bombings of Hiroshima and Nagasaki justified. The U.S. government’s active attempts to limit public revulsion in the bombings’ immediate aftermath appear to have had a lasting effect. But even those who think the use of the atomic bomb against Japan was the right choice must still face the scope of destruction and the generations of suffering that rippled out from the detonations in Nagasaki and Hiroshima.

Southard’s book is an invaluable tool for that task. The instantaneous death of hundreds of thousands of people in August 1945—and the possible deaths of millions or billions more in a future nuclear war—are imbued much more meaning and immediacy by the personal glimpses that Southard provides. ■

Anthony Gregory (anthony.gregory@gmail.com) is a graduate student in history at the University of California, Berkeley, and a research fellow at the Independent Institute.



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Stalin's Prosecutor

RIP Robert Conquest, the historian who held the Soviets accountable

Glenn Garvin

TO UNDERSTAND the moral and literary power with which Robert Conquest wrote, consider the second sentence in his book *Harvest of Sorrow: Soviet Collectivization and the Terror-Famine*, a study of the 14.5 million deaths that resulted from Joseph Stalin's murderous takeover of his nation's agricultural sector: "We may perhaps put this in perspective in the present case by saying that in the actions here recorded about twenty human lives were lost for, not every word, but every letter, in this book."

As Conquest's friend, the British novelist Martin Amis, would later observe with a palpable shudder, "The sentence represents 3,040 lives. The book is 411 pages long." The math is too terrible to contemplate.

Conquest, who died of pneumonia on August 3 at the age of 98, was many things: a highly regarded anti-modernist poet, a military intelligence officer, a diplomat, a scholar, a ribald prankster, a serial non-monogamist (four wives punctuated with countless entanglements), even a dystopian science fiction novelist.

But most of all he was Stalin's personal prosecutor, over and over placing him in the dock of history to answer for his monstrous crimes. Conquest wrote more than a score of books on Soviet history and politics, two of them—*Harvest of Sorrow* and 1968's groundbreaking *The Great Terror: Stalin's Purges of the Thirties*—considered the definitive texts on the pure wickedness of the events they describe. "I know that after my death

a pile of rubbish will be heaped on my grave, but the wind of History will sooner or later sweep it away without mercy," Stalin once said. Fortunately, Conquest was there to stack it right back up.

The British-born son of an American father and an English mother, Conquest was educated at Oxford, where he joined the Communist Party and visited the Soviet Union in 1937. That started a process of disillusionment that gained speed when Conquest served as a British military intelligence liaison to Russian-commanded Bulgarian resistance forces and hit critical mass when he stayed on in Bulgaria as a diplomat after the war and witnessed Stalin's brutal Sovietization of the country. By 1948 he was back in London, writing an increasingly hostile series of Foreign Office research papers on Soviet activities in Eastern Europe that would eventually morph into his books.

The first of those, *Common Sense About Russia*, appeared in 1961. But it wasn't until 1968, with the publication of *The Great Terror*, that Conquest truly hit his stride. Drawn from émigré memoirs, dissident *samizdat* documents, and sworn statements by hundreds of Soviet exiles and defectors who testified in a 1948 libel trial against a French Communist newspaper, *The Great Terror* was the first systematic compilation of the atrocities committed during Stalin's massive purges of 1936 through 1938.

The purges themselves were hardly news, but the world had mostly fixated on the manifest injustice of the Moscow show trials of a relatively small group of disgraced top officials charged with spying and sabotage. Conquest forced attention

to the massive body count—a million or more—among ordinary citizens, who were shot in prison basements or sent to starve to death in Arctic work camps.

But *The Great Terror* was much more than a morgue census. Conquest's compelling eye for detail, coupled with a stark, understated prose style, combined to produce the greatest horror story of the 20th century.

He wrote of a town in Byelorussia where a group of peasants stumbled into what may have been the perpetually depressed Soviet economy's single growth industry: professional informing. They routinely partied after trials with the 15 rubles a head they were paid to denounce neighbors as spies, hoarders, and "wreckers," as saboteurs were known. They even wrote an epic ballad about some of their most successful denunciations.

He wrote of the *urkas*, the labor-camp gangs of common criminals so violent and depraved that even the guards feared them and refused to make them work. The hideously tattooed members, sporting names like Hitler or The Louse, instead spent their days plotting mass rapes of female inmates and gambling for the clothing of newly arrived political prisoners; the losers had to strip it from the victims and deliver it to the winners.

He wrote of Stalin's workdays, which usually began by leafing through hundreds of secret-police-recommended death sentences left in his morning inbox, perhaps with the help of his sycophantic adviser Vyacheslav Molotov. December 12, 1937, was a typical day, Conquest reported: "Stalin and Molotov sanctioned 3,167 death sentences, and

then went to the cinema.”

Not that being a blood-thirsty dictator was all work and no play. Conquest described Stalin laughing until he cried as an executioner acted out the final, sobbing moments of his former crony Grigory Zinoviev. “Stalin was overcome with merriment and had to sign to [the performer] to stop,” Conquest wrote.

“The Great Terror is an extraordinary book, and even more extraordinary is that he extracted it from a totally closed society,” says the Emory historian Harvey Klehr, who has written extensively on Soviet espionage in the United States. “The information was out there, but nobody had thought of collecting it using those sources.”

As skeptics of the Cold War gained the upper hand in American academia, Conquest’s work was dismissed as reactionary fantasy and criminal libel. But in the years after the collapse of the Soviet Union, as Moscow’s archives began dribbling out to the public, his reporting was confirmed and judged by some even a bit too mild.

Conquest was, of course, gratified. Martin Amis reported that, when a publisher asked for a new title for a revised edition of *The Great Terror*, Conquest suggested: “How about *I Told You So, You Fucking Fools*?” The historian later said, not altogether convincingly, that the quote was the jocose fabrication of a friend. But there is little doubt that he considered most of his critics fools, and



fools who needn’t be taken seriously.

In 1988, *The Village Voice* published a shrill attack on *Harvest of Sorrow* that accused Conquest of, among many other things, “red-baiting” Walter Duranty, the *New York Times* correspondent in Moscow whose Panglossian reporting on Stalin won him a now-discredited Pulitzer Prize. Among other things, Duranty’s stories repeatedly denied any famine in the Soviet Union dur-

ing 1932–33, though we now know somewhere between 6 million and 8 million peasants starved to death at the time. *Pshaw*, sniffed Conquest. “Duranty wasn’t a red at all, just a self-serving liar,” he wrote the *Voice*. “I think liars should be baited. Dupes, too, perhaps less harshly.” ■

Contributing Editor Glenn Garvin
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Cuddles Incorporated

What's wrong with selling snuggles for \$1 per minute?

MAN CANNOT live by Tinder alone. "A ton of my male clients have said that it's really easy for them to find sex, but it's really hard for them to find someone to cuddle with," says Samantha Hess. Hess is the proprietor of Cuddle Up to Me, a Portland, Oregon, cuddling studio where Hess and three other comfortably but fully clothed women platonically embrace humanity for \$1 a minute (with a 15-minute minimum).

Over the last half dozen years or so, professional cuddlers have been putting the squeeze on isolation and loneliness in San Francisco, London, Rochester, and many other cities. Hess herself started in 2013, first on an outcall basis, meeting clients at parks, movie theaters, and their homes, then opening up a retail storefront in November 2014.

While practitioners like Hess have received substantial media attention—she appeared on *America's Got Talent* in July, cuddling celebrity judge Neil Patrick Harris until the other judges gave her the cold shoul-

der—only a handful of individuals appear to be doing it in anything approaching a full-time, ongoing way. But professional cuddling is also perfectly situated for a high-stress, overstimulated, screen-dominated era that places an emphasis on self-care and efficiency. More tactile than psychotherapy, more explicitly nurturing than massage...who knows how big an industry it could become?

Professional cuddling can be misperceived as a PG-13 version of prostitution, with all the assumptions, prejudices, legal gray areas, and safety issues that that misperception creates. "Because the social norm around touch is that it's sexualized, most interactions you get as a new startup in this industry are just icky," Hess says. "I can't tell you how many times I got emails from people who were offering me absurd things. I had someone offer me \$500 to make out on their couch for 15 minutes. I'm like, 'No, that's not even close to what I'm doing.'"

It's not just would-be clients who don't understand her business. "I had a hard time finding a retail space that would accept us," she says. "We got rejected by eight different places before we found this one. We have tons of massage places in Portland, but what I'm doing is definitely different. It freaked people out."

To help clarify its status as a professional and above-board industry with no connection to prostitution, the therapeutic massage industry emphasizes training and certification. Most states have massage therapy licensing boards that regulate practitioners. To obtain a license typically takes at least 500 hours of supervised, in-class training; in New York, you need 1,000 hours.

Such requirements help reinforce

the idea that massage therapy is a skilled discipline practiced by experienced professionals who possess genuine medical knowledge and hard-to-acquire skills. But the pursuit of respectability comes at a price. Massage therapy isn't a particularly lucrative profession. According to the Bureau of Labor Statistics, the industry's mean annual wage was \$41,790 in 2014. Obtaining the necessary training represents a significant investment, especially when many practitioners don't necessarily plan to pursue massage therapy as a lifelong career.

"It can cost 16 grand and take a year to 18 months just to get trained," says Joanna Robinson, founder of Lunar Massage, a chain of "affordable, no-frills" massage studios with four locations in Washington, D.C. "It should cost, like, six or eight grand and take no longer than six months."

Along with the training costs, some states or municipalities impose additional fees on therapeutic massage businesses. In D.C., for example, a basic business license for most retail operations costs around \$190 for two years. To obtain a massage establishment license, the cost is \$962.50.

Until 2012, the D.C. chief of police had to approve each massage establishment, and official city code actually made it "unlawful for any female to give or administer massage treatment or any bath to any person of the male sex, or for any person of the male sex to give or administer massage treatment or any bath to any person of the female sex" in such establishments. So you could say all the training, certification, and fees ultimately paid off.

But if professional cuddling attempts to go this route, an obvious issue arises. “There’s only so much information you can give on teaching cuddling versus massage,” says Evan Carp. “I’m not sure how much there is to teach.”

Carp is the founder of TheSnuggleBuddies.com, a website that effectively functions as a kind of centralized cuddling marketplace. Carp hires independent contractors who offer cuddling services in 28 states. Their profiles appear on Carp’s site, but potential customers can’t contact them directly; they request appointments through a form that goes to Carp. Cuddling sessions ultimately take place on an in-call or out-call basis—i.e., not in a permanent retail location. Carp splits the fees with his cuddlers on a 50/50 basis: \$40 an hour for him and \$40 an hour for them. Currently, around 100 women and five men appear on the site.

Carp, who sought out advice from Hess when he was starting up, implements some of the same basic ground rules that she does. Customers are required to sign a waiver in advance asserting that they will not engage in any kind of sexual behavior. Cuddling sessions are fully clothed.

But overall, his is a more *laissez faire* operation. Customers aren’t asked to provide as much personal information as Hess requires. Cuddlers aren’t asked to complete any formal or even in-person training.

In Hess’ opinion, this is both short-sighted and unsafe. “This isn’t just about letting someone lay next to you,” she says. “There’s so much more to it than that. We have over 60 different cuddling positions that we use, because we see people who have disabilities and flexibility issues, or

have experienced trauma,” she says. “You have to know what positions are appropriate for which people, and how to create comfort and trust through the whole process.”

In February 2015, Hess started offering certification workshops—\$900 for a two-day course with some work to be completed in advance off-site, or \$1,600 for a four-day course that’s conducted entirely on-site. Those who successfully complete the workshop will eventually be listed on certifiedcuddlers.com.

“On a personal level, I don’t really care about adding more laws. On a professional level, I will make my certification the gold standard of the industry,” Hess says.

But however valuable the training Hess provides may be, the lack of regulation that currently characterizes professional cuddling is valuable too. Without any legal requirements in place, Hess herself was able to experiment and innovate and create a new livelihood for herself. The women and men who promote their services on Carp’s site can give the profession a try with virtually no barriers to entry. At this point, when professional cuddling has a relatively tentative grip on the market, introducing a lot of requirements and regulations could impede progress rather than hasten it.

Nick Grossman, a general manager at the New York venture capital firm Union Square Ventures, has written extensively about the difference between traditional regulatory efforts and the “2.0” approach that Internet platforms like eBay and Uber employ.

Both are designed to promote trust, safety, and security. But while traditional regulation tries to do this

through licensing, permits, inspection, and other top-down methods of restrictive control, platforms like eBay and Uber “freely [allow] users to act, but then hold them accountable through data and accumulated reputation.” This, Grossman writes in a paper titled “Regulation, the Internet Way,” creates marketplaces that are “massively scalable and also [allow] even the smallest actors to participate with minimal initial overhead.”

In many ways, professional cuddling is a quintessential sharing-economy industry. It recognizes warm but platonic human contact as an asset with both underserved demand and underutilized supply, not unlike spare bedrooms and empty passenger seats. Similarly, TheSnuggleBuddies.com functions somewhat like Airbnb.com or Uber.com, creating a platform that connects cuddlers with customers. What the cuddle site lacks is a reputation system that lets parties on both sides of the transaction rate and review their interactions.

A system like that introduces privacy concerns. But it would also provide accountability on a very granular level while still welcoming any would-be professional cuddler with open arms. These practitioners would be free to innovate, iterate, and otherwise define their nascent profession in a flexible environment, unhampered by overly proscriptive rules and requirements but made safe through transparency and crowd-sourced assessment. Regulatory middlemen will likely find themselves feeling useless and unloved. Luckily for them, sympathetic shoulders will be easy to find. ■

Contributing Editor Greg Beato (gbeato@soundbitten.com) writes from San Francisco.



Action Comics 42

Superman vs. the Cops

Peter Suderman

SUPERMAN HAS a cop problem.

In the summer arc for *Action Comics*, the long-running Superman title, the Man of Steel takes on the heavily armed police force of his fictional home city of Metropolis as the officers advance on his quiet neighborhood. The story, which builds to a dramatic showdown between armored cops and angry local residents, relies on visuals reminiscent of the August 2014 standoff between

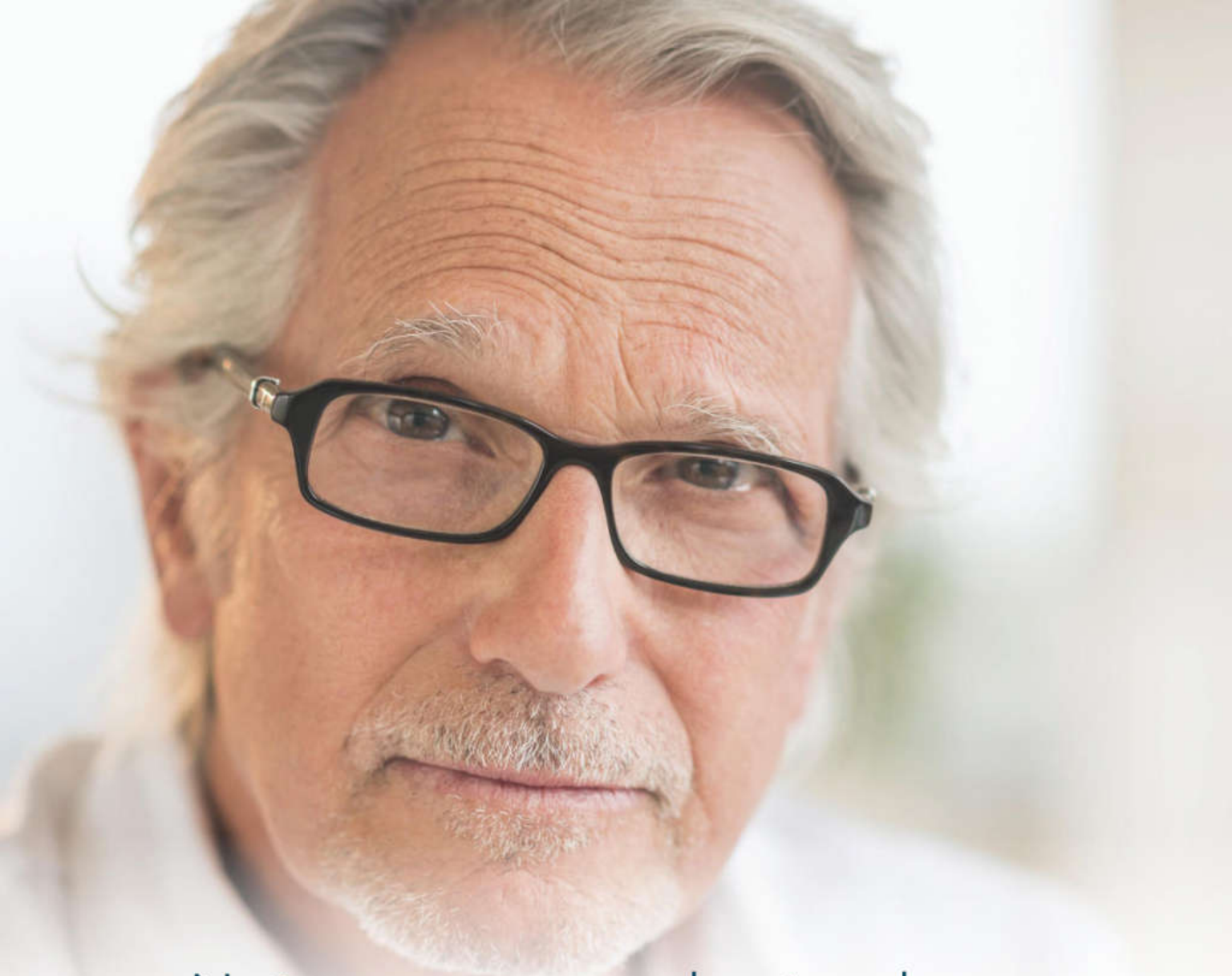
cops and protestors in Ferguson, Missouri, following the police shooting of an unarmed black man there.

In *Action Comics* 41 and 42, a no-longer-invulnerable Superman is called back to Metropolis to stop an attack by an oversized superbeast. He arrives to find that law enforcement, armed with body armor, riot shields, and military transport vehicles, has begun transforming the city into a police state, forcing residents to submit to a battery of tests for alien particles.

With Superman distracted by

the beast, the cops move toward his recently gentrified block. A standoff ensues, and nearly leads to violence—until Superman arrives to break it up by reminding everyone that he’s what connects them all. It’s a corny, earnest tribute to urban community that elides the real issues of police militarization, use of force, and cop-community relations that helped spark the Ferguson protests it so clearly alludes to. ■

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